

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3)
4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Criminal Action
7 v.) No. 13-10200-GAO
8)
9 DZHOKHAR A. TSARNAEV, also)
known as Jahar Tsarni,)
10 Defendant.)
11)

12 BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
13 UNITED STATES DISTRICT JUDGE

14 **JURY TRIAL - DAY FIFTY**

15 John J. Moakley United States Courthouse
16 Courtroom No. 9
17 One Courthouse Way
18 Boston, Massachusetts 02210
19 Monday, April 27, 2015
20 9:05 a.m.

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By Mr. Bruck

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* * * * *

DirectCrossRedirectRecrossWITNESSES FOR THE
DEFENSE:

LAITH ALBEHACY

By Mr. Fick

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By Mr. Chakravarty

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LOAY ASSAF

By Mr. Fick

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By Mr. Chakravarty

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Abderrazak Razak

By Mr. Fick

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By Mr. Weinreb

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ROBERT BARNES

By Mr. Watkins

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By Mr. Weinreb

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GERALD R. GRANT, JR.

By Mr. Fick

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JUDITH RUSSELL

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By Ms. Clarke

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(LOBBY CONFERENCE AS FOLLOWS:

THE COURT: So I have a couple of things. I'd like to know who the witnesses will be.

MS. CLARKE: We gave the government the list, did we not? Is that the most recent one? Sorry, Judge. You're not on our service list. We've taken Abu Turshaev off.

THE COURT: Let me just concentrate on today and tomorrow.

01:05 10 MS. CLARKE: DaSilva may be delayed. Is he on the
11 top?

12 MR. WEINREB: Yes. He's number -- the fifth witness.

13 MS. CLARKE: He may be delayed.

14 MR. WEINREB: Sixth on the list. Delayed past today?

15 MS. CLARKE: Either afternoon or -- yeah.

16 THE COURT: So from the number that I see you have on
17 today, they will be relatively brief? Is that --

18 MS. CLARKE: That's what we expect.

19 THE COURT: Okay. So the first -- I'm just trying to
01:05 20 locate the expert. You have Mark Spencer tomorrow that you
21 expect --

22 MR. WEINREB: Jerry Grant, who's No. 10 on the list.
23 He's an expert.

24 MR. WATKINS: I can speak on that behalf. I don't --

25 THE COURT: Who's Spencer?

1 MR. WATKINS: That's going to be cell phone
2 extraction. I don't think there's any controversy so far as I
3 know. I think really he's going to be somewhat of a reader or
4 at least someone who can click on some of the links that are in
5 those and talk about where links and emails go.

6 MR. CHAKRAVARTY: Your Honor, there's one file that
7 he's trying to introduce substantively from one of Tamerlan's
8 phones, which is a video of their daughter Zahira playing in
9 the playground. It doesn't seem to connect with the defendant.
01:05 10 It seems to be a distraction to humanize both Zahira and
11 potentially the defendant's relationship with her.

12 THE COURT: Well, I don't know. That raises a more
13 general question, that is, for the exhibit objections, I'm
14 going to have to obviously see the exhibits, which I haven't
15 seen yet either. So if you can work on what you think are the
16 controversial ones so I can get a head start on some of that.

17 MS. CLARKE: The exhibits are listed.

18 THE COURT: Right. Do we have a thumb drive or
19 anything with them?

01:05 20 MS. CLARKE: You should. New ones got added, I think,
21 this morning to Paul's list.

22 MR. WATKINS: I think we sent over a JERS disk with
23 them, so they're in the system.

24 THE COURT: JERS disk, okay.

25 MR. WATKINS: Did you also want them separately for

1 chambers?

2 THE COURT: I don't know the technology, frankly, how
3 I tap into JERS at this point. It goes into that system. It
4 would be convenient to have a thumb drive or a disk to stick in
5 my desktop.

6 MS. CONRAD: The JERS disk is just a PDF.

7 MS. CLARKE: Does Paul need to keep the thumb drive
8 once we give it to him?

9 THE COURT: That's the JERS one? I don't know.
01:05 10 That's what I don't know the answer to.

11 MS. CLARKE: If you don't know, you know I don't know.

12 THE COURT: Anyway, okay. But I'd just like to have a
13 head start on this so I could have seen the controversial
14 items. I gather from the defendant's response to the
15 government's extensive exhibit motion, a good bit of that is
16 not going to be offered and not in controversy.

17 MS. CONRAD: Well, not discussed in the opening, but
18 certainly a good bit of that is going to be offered.

19 MR. BRUCK: Well, for example, they have objection to
01:05 20 numerous photographs from our Russia expert, Reynolds, but we
21 are only going to use a few of them. We're not going to use
22 the photographs that are not taken from the defendant's
23 computer, which the government is objecting to. We're going to
24 use very non-controversial ones such as maps and so forth.
25 Generally speaking, I think the burden of the government's

1 objections are not actually going to have to be ruled on.

2 THE COURT: Okay.

3 MS. CLARKE: If I can grab my list, I can make sure
4 you guys have the numbers. You guys have all of the exhibits.

5 MS. CONRAD: May I speak to Mr. Bruck for a second?

6 MS. CLARKE: Judge, can I --

7 THE COURT: Yeah, go ahead. Is Paul out there to let
8 you back in?

9 MS. CONRAD: Judge, did you want to go through all the
01:05 10 objections in the government's motion in limine?

11 THE COURT: Not if I don't have to.

12 MS. CONRAD: We only address the ones that were
13 germane to the opening statement, but many of these objections
14 are still live.

15 THE COURT: I guess my point is it will help me to
16 understand the argument if I have had a chance to look at the
17 objected-to materials. So that's what I'd rather do.

18 MS. CONRAD: We can get those to you. We've also done
19 some further redactions, for example, on some of the objections
01:05 20 on the 302s. We've adopted a lot of the government's proposed
21 redactions, but not all of them, and I have them all
22 catalogued.

23 THE COURT: As they come up on the horizon, then --

24 MS. CONRAD: Can I just email -- I can do that from my
25 computer now, or would you prefer just getting them on one disk

1 or something? Some of those are going to come up today if we
2 get that far.

3 THE COURT: I guess I'd prefer one disk that had the
4 whole roster.

5 MS. CONRAD: Sure.

6 THE COURT: And then I just have it and -- 3207, I can
7 go and look at it.

8 MS. CONRAD: Okay. We can probably get somebody to
9 burn that and bring that over.

01:05 10 MR. WEINREB: Your Honor, we'd request a copy of that
11 same disk just to make sure we're all on the same page.

12 MS. CONRAD: Sure. I thought that's what we gave the
13 government yesterday.

14 MR. WEINREB: We've been getting a lot of exhibits
15 from the defense piecemeal over time which we've been
16 combining. It's not clear -- sometimes we have an exhibit, and
17 then it gets broken out into A and B and other such things
18 indicating only a subset is going to be offered. This way
19 we'll know which one is going to be offered.

01:05 20 THE CLERK: I did get the most recent thumb drive from
21 defense about ten minutes ago, which has everything on it for
22 JERS. That's the initial list last week to what's coming on.
23 I haven't loaded it on my JERS. Do you want to see it?

24 MS. CONRAD: Once it's loaded, then can the judge have
25 that, or should we produce a new thumb drive?

1 THE CLERK: No.

2 MS. CLARKE: Then can we get Paul Bruemmer to make a
3 copy of that thumb drive, too?

4 MS. CONRAD: For the government.

5 THE CLERK: That's fine. As long as I get it on JERS,
6 you can do what you want with the thumb drive.

7 MS. CLARKE: I don't mean exactly but --

8 THE COURT: Okay. Well, are there particular -- let's
9 just look at today, which goes down through 14, I guess. Are
01:05 10 there -- with respect to the identified exhibits in the
11 right-hand column, are there issues that we know of that we'll
12 have to deal with?

13 MR. BRUCK: Maybe we should start with opening
14 unless -- which we would not --

15 THE COURT: I just want to prioritize my look at the
16 exhibits. That's all. If you say, Yeah, with respect to Gina
17 Crawford's photos or whatever, I would look at those before I'd
18 look at the other things. That's all.

19 MS. CONRAD: So with respect to the documents that are
01:05 20 going to be read by Sonya Petri, Exhibit 14 -- Witness No. 14
21 on this list -- actually, it's really 13 because one is the
22 heading. So the three Dolakov 302s -- I believe one of them,
23 the portions the government objected to, have all been
24 redacted, 3271A, I think it is. Give me a minute. I can tell
25 you.

1 3270A, there probably are still some remaining issues.
2 We redacted some of what the government objected to and not
3 others.

4 3271A, none of the objected-to portions are being
5 presented to the jury or read to the jury. We're just putting
6 in this one paragraph about Jahar Tsarnaev.

7 And 3269, which was a late-added exhibit, I don't
8 believe the government has indicated whether they have any
9 issues with the proposed exhibit, and that may be because they
01:05 10 haven't had a chance to review it.

11 Exhibit 3274A, again, we've redacted some portions the
12 government objected to and not others.

13 THE COURT: Okay. So there may be some minor or
14 lesser --

15 MS. CONRAD: A sentence here and a sentence there.
16 Just to give you an example of one of the more minor ones,
17 there's one portion where the government -- I think it's
18 3270 where there's a follow-up interview. We've redacted all
19 of it except for the line that they met again with the witness
01:05 20 at a Starbucks. We just left that in to set the timing of that
21 interview. And the government had redacted that out. So I
22 don't think that should be controversial.

23 MR. WEINREB: So, your Honor, with respect to 302s,
24 the government objects generally to the introduction of 302s,
25 which are FBI interviews, basically an agent's notes of

1 unsworn, uncross-examined statements by a witness sometimes
2 given years ago.

3 The jury, as the judge of the facts, has to determine
4 whether what's said by a witness is true and also how much
5 weight to assign it. In general, that's simply impossible to
6 do based on merely a 302. It's not sworn. The agents are
7 simply asking questions. They're not cross-examining. They're
8 not necessarily challenging the witness. Certainly, they're
9 not challenging their ability to perceive, their ability to
01:05 10 recollect, their ability to narrate, whether they have biases,
11 all the things the jurors need to know in order to assess
12 whether to assign weight to evidence. So it puts the jurors in
13 the position of having to -- no basis whatsoever on which to
14 accept or reject it. And the information -- it's like
15 speculation on their part.

16 With respect to particular 302s that the defense has
17 asked us to allow them to put before the jury, we have
18 essentially agreed that we will waive our objection with
19 respect to certain of them, in particular, the ones associated
01:05 20 with Mr. Kartashov or Mr. Dolakov. Our understanding is those
21 two witnesses are particularly important to the defense because
22 they tell a narrative of Tamerlan Tsarnaev's radicalization,
23 and they date it to a point earlier than when they believe
24 Dzhokhar Tsarnaev was radicalized, and that's very important to
25 their theory of the case. And so taking that into account and

1 other factors, we've agreed to waive our objections.

2 But we do not waive the objection with respect to Mr.
3 Vakhabov. Up until Saturday at 8:30, we have been under the
4 understanding that Mr. Vakhabov was going to take the stand and
5 testify.

6 THE COURT: Who is he?

7 MR. WEINREB: He is essentially a friend of Tamerlan
8 Tsarnaev's who lives in this country and knew him. There was a
9 group of friends -- Mr. Vakhabov, Mr. Turshaev, Sebastian
01:05 10 Freddura, others -- who were contemporaries of Tamerlan
11 Tsarnaev's and were friends of his.

12 Mr. Vakhabov, we object in particular -- in addition
13 to our general objection, we object in particular to any 302 of
14 Mr. Vakhabov coming in because he is an unreliable witness. He
15 is someone who refused to testify in the grand jury on the
16 grounds that his testimony might incriminate him. My
17 understanding is he's informed the defense -- or his lawyer has
18 informed the defense that he would do the same if called at
19 this trial.

01:05 20 In addition, he gave several statements to the FBI
21 over time before he was called to the grand jury, in which he
22 gave inconsistent statements and statements about matters of
23 great import. I think it's undisputed that Tamerlan Tsarnaev
24 contacted him on April 18th, I believe, between the time that
25 Officer Collier was murdered and the time that Dun Meng was

1 carjacked. And he has given quite inconsistent statements
2 about what that conversation was about and about what Tamerlan
3 Tsarnaev may have asked him or said to him.

4 Those are matters that are essential for the jury to
5 hear if they're going to have any idea whether to believe other
6 things that Mr. Vakhabov said. He's not a disinterested third
7 party in this case. On that ground, we believe that this is
8 just putting information before the jury that is much more
9 prejudicial than probative. It creates too much of a chance
01:05 10 that they will be misled, confused, and so on.

11 In addition, a lot of his testimony is cumulative.
12 For example, Mr. Dolakov and Mr. --

13 THE COURT: Who's Dolakov?

14 MR. WEINREB: Dolakov is another friend of Tamerlan
15 Tsarnaev's.

16 THE COURT: U.S. friend?

17 MR. CHAKRAVARTY: U.S. friend. He was a foreign
18 student. He's from the Caucasus but he's not Chechen. He knew
19 him -- knew Tamerlan somewhat but not very well. Mr. Vakhabov
01:05 20 knew him better because he lived here for a little bit longer
21 together. But they did various activities together including,
22 the Friday before the bombing, they went to the gym together.
23 He also went to the mosque.

24 MR. WEINREB: I think there's a difference between
25 reading potentially a document to a witness that -- I mean, to

1 the jury that's in the essence of, like, a business record and
2 one that is a statement of a witness. I mean, one of the main
3 functions of juries is to observe witnesses on the witness
4 stand and make judgments about whether to believe what they say
5 or not. That's just impossible if a reader is reading a 302.
6 It's really impossible for the government to bring out what it
7 would normally bring out during cross-examination. Even though
8 the Rules of Evidence don't strictly apply at sentencing
9 hearings, it's still important that jurors make quality
01:05 10 decisions based on quality evidence, and it's not that when you
11 have these unsworn, uncross-examined notes of an interview.

12 MS. CONRAD: May I respond, your Honor? So, first of
13 all, everything Mr. Weinreb has said goes to weight. It
14 doesn't go to admissibility. And, clearly, the Rules of
15 Evidence don't apply. Clearly, this witness is unavailable.
16 These were statements taken by an FBI agent who carefully
17 documented them. We are simply recounting what that witness
18 said.

19 This is an important witness, a very close friend of
01:05 20 Tamerlan Tsarnaev's, a witness who talks about Tamerlan's
21 radicalization and the timing of that. He's corroborative of
22 other witnesses. He also talks about Jahar. Mr. Vakhobov's
23 brother was a friend of Jahar's, and he had interactions with
24 Jahar as well and he talks about that.

25 If the government feels that there is a question of

1 unreliability, it seems to me to the extent -- I don't really
2 see that in the statute as being a threshold, but if there is a
3 threshold, then maybe the Court needs to have a hearing and
4 make a preliminary ruling on the reliability if the Court is
5 going to exclude it based on claimed lack of reliability.

6 It also seems to me that, at least by analogy, is
7 Federal Rule of Evidence 806. If the government has evidence
8 of inconsistent statements, it can offer them. 806 says, when
9 an out-of-court statement is offered under an exception -- or
01:05 10 rather, excuse me, that's characterized as non-hearsay is
11 offered, it can be impeached in the same manner as if the
12 witness were on the stand.

13 So if the government -- you know, we may have
14 prejudice issues there if they relate to inconsistencies
15 outside of the statements -- substance of the statements that
16 we're offering as far as, for example, what happened on the
17 night of the -- in the days surrounding the bombing, which I
18 don't think we were planning to put in at all.

19 So -- and to say it should be excluded because he's
01:05 20 not a disinterested third party, I'm not aware of any rule of
21 evidence or any ruling under the Death Penalty Act that says
22 that all witnesses have to be disinterested third parties.
23 That just simply is not the case. Family members testify.
24 Friends are going to testify. And it seems to me that the
25 government's threshold for evidence that is relevant to the

1 defendant's case in mitigation is set way too high to try to
2 bar what is clearly relevant evidence.

3 THE COURT: Well, as Wigmore says, "The great engine
4 for seeking the truth is cross-examination," and so that's
5 always preferred. So I think, as a general proposition, if the
6 witness is available, then a substitute out-of-court statement
7 of any kind, including 302s, would not be preferred. There
8 would have to be some substantial reason to go to that rather
9 than the availability of a witness who would be subject to
01:05 10 cross-examination.

11 There may be some people who are not available in
12 various -- for various reasons. I've already suggested earlier
13 in the case that the Kartashov's 302 could be used as a
14 substitute because he was not able to be deposed. And so there
15 can be circumstances where the 302 might --

16 I do think that it may be appropriate at an
17 appropriate time to caution the jury about the considerations
18 they might have in assessing the reliability of the evidence
19 under those circumstances where cross-examination is absent. I
01:05 20 think that's something that would be well within the
21 appropriate instructions, at least at the end of the case, on
22 how to evaluate the evidence, if not contemporaneous with the
23 offer.

24 So some of them we'll have to take one by one and just
25 see what the circumstances are, what the unavailability is and

1 so on. I guess I have a -- well, I'll just leave it at that.

2 So there may be some that there's no controversy
3 about. There seems not to be a controversy about Kartashov,
4 for example, except for portions of it. But as a principle,
5 the use of the report itself --

6 MR. WEINREB: We're willing to waive our objections on
7 that one.

8 THE COURT: So now I know there's one person anyway
9 that you have a serious disagreement about. I'll have to look
01:05 10 at that and look at the circumstances.

11 MS. CONRAD: Just for purposes --

12 THE COURT: Let me just say --

13 MS. CONRAD: Sure.

14 THE COURT: -- in general, I do think there's a
15 reliability standard implicit in the statute and in the
16 project, and so I will prefer better evidence over less good
17 evidence as a general proposition, whether it's in this hearsay
18 context or others. There's kind of a general cloud of best
19 evidence principles over the case. And so if a witness can be
01:05 20 subpoenaed and examined and then subjected to
21 cross-examination, that is the first step, and there has to be
22 an excuse for that not occurring in order to get secondary or
23 lesser quality evidence. That's just a general guiding
24 principle.

25 MS. CLARKE: For the Court's purposes, the only 302s

1 that I believe we are planning to put in are those that are
2 unavailable: Kartashov, Dolakov.

3 THE COURT: Why is Dolakov unavailable?

4 MS. CONRAD: Can't find him. Neither can the
5 government.

6 THE COURT: There's an indicia of reliability.

7 MS. CONRAD: Maybe he just wants to move on with his
8 life.

9 MS. CLARKE: Vakhobov is Fifth Amendment. And then we
01:05 10 just recently learned on Mirra, No. -- that she's very ill, and
11 her doctor is going to provide a note.

12 THE COURT: Who's she?

13 MS. CLARKE: She is a --

14 THE COURT: Relative?

15 MS. CLARKE: No, no. She's a disinterested third
16 party.

17 THE COURT: Okay. All right. So now -- so I'll start
18 to get a head start on some of those issues which you think you
19 might get to today.

01:05 20 MS. CONRAD: Yes, 3269, 3270, 3271, and 3274, although
21 actually I should say "A" because those are the redacted
22 versions as to all of those.

23 THE COURT: Okay, all right. Are there any others in
24 today's list that you think will be controversial?

25 MS. CLARKE: Bill, if you look at my updated one --

1 THE COURT: While they're conferring, where do you
2 think we would be at the break? First of all, how long do you
3 think the opening will be?

4 MR. BRUCK: Forty-five minutes.

5 THE COURT: Okay. So we won't get very far into the
6 list then probably before the break, will we?

7 MS. CLARKE: That's probably correct. Judge, what
8 looks like No. 6 on the list is really No. 5 on the list
9 because they're delayed, DaSilva.

01:05 10 THE COURT: Okay.

11 MR. MELLIN: Your Honor, may we ask what exhibits Mr.
12 Bruck is going to use in his opening?

13 THE COURT: We'll come to the opening in a minute.

14 MR. WEINREB: Your Honor, with respect to today's
15 exhibits, the only other one we have an objection to is this
16 seemingly entirely gratuitous video of Zahira Tsarnaeva, the
17 daughter of Tamerlan and his wife, you know, untethered to any
18 connection to the defendant or to anything else seemingly, just
19 to show that -- you know, it essentially suggests to the jury
01:05 20 that they should consider what the effect of a death sentence
21 would be on other people, which is execution impact evidence,
22 which --

23 THE COURT: What exhibit is that?

24 MR. WEINREB: That is one of the Bill Fick will email
25 exhibits for Jerry Grant.

1 MR. CHAKRAVARTY: I think it's 3317, that series.

2 MS. CLARKE: The digital evidence is on the 3300
3 series.

4 THE COURT: Okay. Well, let me look at it.

5 MR. BRUCK: We need to hear why it's relevant.

6 MR. WATKINS: As I understand it, it goes to
7 radicalization. It is not an issue of Tamerlan Tsarnaev's
8 particular radicalization. I believe that's true of this one
9 where we're talking about Arabic slogans that he's teaching his
01:05 10 young daughter in that period of time.

11 MR. BRUCK: The video depiction, as I understand it,
12 over and over and over again teaching the child to say Abu
13 Akbar, Abu Akbar, in this sort of compulsive, insistent, weird,
14 inappropriate seeming way, and it is another window into
15 Tamerlan's radicalization and monomania.

16 THE COURT: How long is it?

17 MR. WATKINS: Thirty-three seconds, I think somebody
18 just said.

19 THE COURT: All right. I'll look at it.

01:05 20 I think maybe now we can get to the opening. What
21 exhibits do you propose to use in the opening?

22 MR. BRUCK: We're going to use two chalks, a map just
23 to orient the jury, and a second map which just depicts
24 schematically the wanderings of the Tsarnaev family in Russia
25 over the 15 years between when the parents just met and when

1 they left the United States. And the government has those.

2 Then we also intend to display two exhibits which I
3 think are 3253 and 3254 --

4 MR. WATKINS: Unfortunately, I left that list in the
5 --

6 MR. BRUCK: -- which are aerial photographs of ADX
7 prison. One is a very distant view that shows the setting, and
8 the other is a black and white that shows the prison in a
9 relatively close-up aerial view. This is simply to illustrate
01:05 10 the meaning of the jury's sentencing alternative. The
11 government has said they were going to move to exclude the
12 general subject matter of ADX but have not yet actually made
13 that motion except with respect to these photographs. So we
14 haven't really engaged the legal issue.

15 What this concerns -- we've briefed the issue -- I
16 very -- we got this objection on Friday, and yesterday I was
17 able to respond to it in writing. The government has a
18 nonstatutory aggravating factor that the defendant incited
19 others, made statements, in effect, incited others to commit
01:05 20 acts of violence. We think that fair response to that is to
21 show the extent to which the government can prevent the
22 defendant from communicating and inciting others and in any way
23 causing others to commit acts of violence in the future by
24 virtue of the SAMS, which he has been on since August of 2013
25 and which he will be on at the discretion of the Justice

1 Department for as long as they see fit. So we intend to put
2 that into evidence.

3 Along with that, what goes with the SAMS are the ways
4 where someone is held when they are under SAMS and have a
5 terrorism conviction. We subpoenaed a witness back in January.
6 We found out that the government proposes to give us three
7 other witnesses whom we actually didn't want. We've -- and
8 there -- there has yet been no written objection to any of this
9 in terms of relevance except for this photograph.

01:05 10 Now, this is an extremely important part of our case,
11 and it seems only fair that when there is so much attention
12 focused on the defendant's statements, on his capacity to
13 communicate with others, that we may be able to respond. This
14 is not intended to show -- and we have removed the mitigating
15 factor about conditions of confinement. It is not intended to
16 show that they'll hammer him at ADX. It is intended to show
17 that whatever he did in the past the jury should not give
18 weight to the risk of recurrence in the future if for no other
19 reason than because of the tools available to the government
01:05 20 which we think should be made visual before they make this
21 decision and weigh everything. So that's the gist of it.

22 And for -- the government says that this suggests a
23 verdict based on emotion and sympathy. I mean, after what
24 we've been through, I just was gobsmacked by that argument.
25 That is not the risk that the jury is going to be unduly

1 sympathetic to this defendant.

2 MR. WEINREB: Your Honor, generally speaking,
3 information about the capacity of the Bureau of Prisons to
4 incapacitate prisoners is not relevant to mitigation because it
5 is not an issue about whether this particular murderer is more
6 morally culpable for his crimes than another murderer, but it's
7 a question about, in general, whether we need the death penalty
8 at all given the ability of the Bureau of Prisons to
9 incapacitate people.

01:05 10 The Supreme Court has held that if the -- or courts
11 have held that if the government alleges as an aggravating
12 factor that the defendant presents a risk of future danger, for
13 example, to people within the institution of the Bureau of
14 Prisons, and even if it doesn't allege it as an aggravating
15 factor, if it, nevertheless, puts on evidence of it or suggests
16 it in its opening statement or in its case in chief that it is
17 fair rebuttal by the defense to show that the defendant will
18 not be a future danger to others.

19 The government, however, has done none of those
01:05 20 things. We have not alleged future dangerousness as a factor,
21 and we have never suggested that once the defendant is
22 incarcerated he will be a danger to others. The nonstatutory
23 aggravating factor to which Mr. Bruck refers states that the
24 defendant, in the boat, made statements suggesting that others
25 would be justified in committing additional acts of violence

1 and terrorism against the United States. It is a past tense,
2 backward-looking allegation with respect to a circumstance of
3 the crime, not with respect to his character as a person going
4 forward, that he is a violent person and, therefore, the world
5 needs to be protected from him beyond mere incapacitation in
6 prison.

7 Even assuming for the sake of argument that what Mr.
8 Bruck alleges is true, that they will be able to prove, for
9 example, that SAMS exists at the discretion of the Attorney
01:05 10 General or actually subject to review and often terminated by
11 courts, and even assuming for the sake of argument that it's
12 admissible for them to put in evidence about the SAMS at all,
13 an aerial view of ADX prison has absolutely nothing to do with
14 the defendant's ability or inability to offer encouragement of
15 incitement to the outside world. The photos that Mr. Bruck
16 wants to use are calculated to make ADX look like an extremely
17 forlorn, forbidding institution. They in no way relate to
18 anything that he has said is an actual issue in the case. It's
19 simply an effort to convince the jury that life imprisonment is
01:05 20 a bad enough punishment as a kind of moral proposition that the
21 death penalty is unnecessary. And that is not -- that is
22 something that the defense is able to argue with respect to the
23 defendant in particular based on his character, based on the
24 circumstances of the crime, based on his history, that given
25 all those factors, that life imprisonment is a sufficient

1 punishment for him. But that's different from photographs that
2 try to suggest that, as a general matter, life imprisonment is
3 a -- that the death penalty is an unnecessary punishment given
4 how forbidding ADX prison looks from the sky. That's a public
5 policy argument. That's not something that helps distinguish
6 him from other murderers.

7 THE COURT: Well, no. So, again, there are, I think,
8 two issues. I disagree with that. I think it goes to the
9 weighing that the jury will ultimately do, is, do the
01:05 10 aggravating factors outweigh the mitigating so that the death
11 penalty is the preferred punishment in this case or is life
12 imprisonment without possibility of release sufficient. And I
13 think that's inherent in what the judgment will be, so I think
14 that's a legitimate consideration for the jury.

15 The second reason, the quality of the evidence itself
16 and whether it's misleading or accurate and so on and so
17 forth -- so I don't know whether those things are mixed. If
18 you put aside the first --

19 MR. WEINREB: Very well, putting aside the first, the
01:05 20 defendant will never see the outside of ADX prison. How it
21 looks like from the sky is utterly irrelevant to what his life
22 will be like. In fact, Mr. Bruck is correct that we have not
23 objected to the defense putting on photographs and evidence of
24 what the inside of ADX is like, in other words, the parts that
25 the defendant will actually experience. We haven't okayed to

1 it putting aside whether a legal objection could be made. All
2 we've said is that, if they intend to put in that evidence,
3 then we assume and assert that it opens the door to us putting
4 it in context and challenging it and so on. But these aerial
5 shots of ADX are utterly irrelevant to what the experience of
6 this defendant will be inside ADX. He's not going to be
7 viewing it from a helicopter.

8 THE COURT: Are they misleading, in your view?

9 MR. WEINREB: Yes, they are. The ADX -- the photos
01:05 10 are designed to make it look like ADX could be on the moon.
11 They are, again, completely isolated from surrounding areas and
12 that's simply not true. I think ADX is located within 40 miles
13 of the nearest town.

14 MR. MELLIN: It's in the foothills of Colorado,
15 pushing up against the Rocky's. The photo is taken in such a
16 way that it looks --

17 THE COURT: Do you have the photo?

18 MS. CLARKE: Yeah.

19 MR. BRUCK: We have it on poster boards. We're not
01:05 20 using it on poster boards. We're using it on the system, but
21 we have a mockup.

22 I have to say, it shows the Rocky's. It shows the
23 prison. It is -- I don't know how you could depict the prison
24 in its setting without a picture almost exactly like this. The
25 *New York Times* used this exact photograph, and we think it's

1 accurate. It's not the only thing the jury is going to hear
2 about it, but it simply says, This is where he's going, and it
3 is what it is.

4 If we -- I mean, I'm at a loss to know how we can
5 depict the alternative to the death penalty without showing a
6 view. Obviously, if the government has views of ADX that make
7 it look like a pleasant place to be --

8 MS. CLARKE: It does not have a feel of a resort.

9 MR. WEINREB: The defense has put on their exhibit
01:05 10 list numerous photos of ADX --

11 MR. BRUCK: Interior shots.

12 MR. WEINREB: -- that we have not objected to as being
13 accurate photos. That's the part that the defendant will
14 actually experience. That's the point.

15 MR. CHAKRAVARTY: Another point, the ADX photos, to
16 suggest that ADX, which is a place that he will be going to, is
17 the place where he will spend the rest of his life is --

18 THE COURT: Does look like the moon.

19 MR. BRUCK: It is like the moon. I've been there.

01:05 20 MR. CHAKRAVARTY: The fact that he's going there, over
21 time that could change.

22 MR. BRUCK: All of that is going to be made known.

23 THE COURT: I'm sorry?

24 MR. WEINREB: We're just talking amongst ourselves.

25 MR. BRUCK: There's also a black-and-white shot.

1 We propose to do a little close-up to show the
2 exercise --

3 THE COURT: I'm sorry?

4 MR. BRUCK: We're going to do a little close-up on
5 TrialDirector just to show the outdoor areas of the unit. I
6 mean, after a proceeding -- I don't know if the Court needs to
7 hear more from me.

8 THE COURT: You can use it.

9 MR. BRUCK: Great.

01:05 10 THE COURT: Okay. Is that it?

11 MR. WEINREB: Yes.

12 THE COURT: Can we start?

13 MS. CLARKE: Rule 29.

14 MR. BRUCK: The question was whether we could further
15 reserve this or whether the motion needs to be made now. I
16 don't know.

17 MS. CLARKE: I think we just want to make sure the
18 record was clear we made the Rule 29.

19 THE COURT: I wasn't clear whether you made it on
01:05 20 Friday or you were saying you were going to make it this
21 morning.

22 MS. CLARKE: We consider it made. And the motion on
23 duplicative aggravating factors is renewed.

24 THE COURT: Okay.

25 MS. CLARKE: That was 249.

1 THE COURT: 289, I think.

2 MS. CLARKE: Whatever.

3 THE COURT: Anyway, that one is denied. I reserve, as
4 I did before, the Rule 29 motion.

5 MR. WEINREB: Your Honor, we filed a motion to strike
6 mitigating factors.

7 THE COURT: Oh, yes. That's granted. I don't think
8 there was much opposition, 1113, 14, and 15.

9 MR. BRUCK: Yikes.

01:05 10 THE COURT: Go ahead.

11 MR. BRUCK: We hadn't even responded to it.

12 MS. CONRAD: We just got it last night.

13 THE COURT: Can you not address them in the opening?

14 MR. BRUCK: We're not going -- the opening does not
15 list mitigating factors.

16 THE COURT: I tipped my hand. I think you've got an
17 uphill battle, but I'll give you the opportunity to change my
18 mind. Let me just say I don't think they meet the statutory
19 standard of the defendant's characteristics and character and
01:05 20 the circumstances of the offense. That's my general take on
21 it, but I'll hear from you, obviously.

22 MR. BRUCK: Okay.

23 THE COURT: I thought we had sort of previewed this
24 the other day.

25 MS. PELLEGRINI: We did.

1 MR. WEINREB: Also, I think 13 was withdrawn.

2 MR. BRUCK: 13 was withdrawn.

3 MS. CLARKE: Not on Friday but another day.

4 MR. BRUCK: Although it will be reasserted if --

5 THE COURT: As long as you're not going to make
6 reference to the topics in the opening or with the witnesses
7 today, there's no problem.

8 MR. BRUCK: No.

9 THE COURT: Okay.

01:05 10 . . . END OF LOBBY CONFERENCE.)

11 (The Court and jury entered the courtroom at 10:03 a.m.)

12 THE COURT: Good morning, jurors. Once again, thanks
13 for your patience. We had some organizing work to do, and,
14 hopefully, that will makes things move a little smoother.

15 Again, I ask you: Have you all been able to avoid any
16 contact with reporting about the case with the news? Yes? And
17 avoid any discussions with people about the case?

18 THE JURY: Yes.

19 THE COURT: Thank you. We're now at the stage where
01:22 20 the defense will present its case in this phase of the trial.
21 And as usual, we'll begin with an opening statement which I
22 told you was reserved from the beginning to this point. Mr.
23 Bruck will now present the opening statement.

24 MR. BRUCK: Thank you, your Honor. Mr. --

25 MR. WATKINS: Before we begin, may we have the jurors

1 pull out the monitors and also have the feed go --

2 THE COURT: Is it the CART feed as opposed to the
3 table?

4 MR. WATKINS: Yes.

5 THE COURT: Okay.

6 MR. BRUCK: Everybody ready?

7 THE COURT: No notes during the opening statement.
8 That's because? You know the answer. Because it's not part of
9 the evidence.

01:23 10 MR. WATKINS: Judge, it's not yet feeding into any of
11 our monitors.

12 THE COURT: I don't have it yet here myself. Try
13 again.

14 There. I'm getting it now.

15 MR. WATKINS: Thank you, your Honor.

16 MR. BRUCK: Good morning.

17 THE JURY: Good morning.

18 MR. BRUCK: We've now seen more pain and more horror
19 and more grief in this courtroom than any of you would have
01:24 20 thought possible. And we have heard from so many survivors who
21 have testified with such courage and such dignity. And it now
22 falls to you to decide what is the best, what is the most
23 appropriate, response, not just to the crime but to the person
24 who is being sentenced for committing it. As you know, there
25 are only two punishments for you to choose from: death and

1 life imprisonment without any possibility of release or parole.

2 Judge O'Toole has already told you the law never
3 requires you to vote for death. That is different than the
4 first phase of the trial. When you took an oath to well and
5 truly try this case, with respect to the issue of guilt or
6 innocence, that oath meant that when the government proved the
7 defendant's guilt beyond a reasonable doubt as to any count in
8 the Indictment, it was your duty to vote guilty. You were
9 required to vote guilty when the evidence reached the point of
01:25 10 proof beyond a reasonable doubt.

11 But the death penalty doesn't work that way. Whether
12 you vote for death is up to each one of you. The law doesn't
13 tell you what to do. Each one of you has to decide that for
14 yourself and only after you take everything into account.

15 We are asking you to punish Jahar by imprisoning him
16 for the rest of his life. And for the next few minutes, I'd
17 like to tell you some of the reasons why and about some of the
18 evidence that you will be hearing in this phase of the case.
19 The choice might be easier if you only had to consider the
01:26 20 evidence of these awful crimes. But the man who conceived,
21 planned, and led this crime is beyond our power to punish.
22 Only the 19-year-old younger brother who helped is left. So
23 the question of what makes most sense, death or a lifetime of
24 unrelenting punishment, is more complicated than just the
25 crimes themselves.

1 Now, you've all probably realized by now that no
2 punishment, no punishment, could ever be equal to the terrible
3 effects of these crimes on the innocent people who were killed
4 and hurt or on their families. There is no evening the scales.
5 There's no point in trying to hurt him as he hurt because it
6 can't be done. All we can do, all you can do, is to make the
7 best choice. And if there's one thing to remember through all
8 of this, it is that Jahar will be severely punished either way.
9 Your guilty verdicts have already guaranteed that. One
01:28 10 punishment is over quickly, although after more media attention
11 and fame and notoriety. The other will last for years and
12 decades while he is locked away and forgotten.

13 As you'll soon learn, if you sentence him to life,
14 this is where he will be. Administrative Maximum Facility in
15 Florence, Colorado, also known as ADMAX or ADX. The ADX
16 facility is on the left here. A little more about that later.

17 But for now, I just want to make the point that this
18 hearing is not about whether to punish Jahar Tsarnaev. It's
19 only about how. No matter what Jahar does now, no matter what
01:29 20 regrets he feels, no matter how much he matures, no matter what
21 amends he may wish to make, his last chance came when he was
22 19, and he will never be given another. We'll bring you
23 evidence about that, and we'll let you see how the government
24 will ensure that Jahar will be securely locked away, safely and
25 securely, where he can never hurt anyone or even be heard from

1 ever again if any of you choose to punish him with life
2 imprisonment.

3 Now, maybe we could have shown you this and stopped.
4 He goes here and he's forgotten. No more spotlight like the
5 death penalty brings. His legal case will be over for good.
6 And no martyrdom. Just years and years of punishment, day
7 after day, while he grows up to face the lonely struggle of
8 dealing with what he did. And all the while society is
9 protected. That might be -- that should be -- enough to vote
01:30 10 for life for Tamerlan Tsarnaev's younger brother. But each of
11 you said that you'd want to know everything about Jahar as well
12 as about the crime before you made this decision. Whether you
13 realized it or not, each of you persuaded Judge O'Toole that
14 you meant it, and that is why you were found to be qualified to
15 sit on this jury.

16 Miss Pellegrini said in her opening statement last
17 week that all you need to know about Jahar Tsarnaev is what he
18 did on Boylston Street because, she said, that's who he is.
19 That's his character. Simple as that. You think about it for
01:31 20 a moment what that really means, if it were true, is that Jahar
21 is someone who would have conceived and committed these crimes
22 on his own. And that's the question -- there's the question --
23 you'll need to answer. Miss Pellegrini said that Tamerlan
24 doesn't matter. He's just an easy target. But if Tamerlan
25 hadn't been in the picture, would Jahar have done this on his

1 own or anything even remotely like it? So we're going to bring
2 you more evidence to help you answer that question.

3 Now, let me be clear about something. No one is going
4 to claim that Tamerlan forced Jahar to help him commit these
5 terrible crimes. Miss Clarke told you that at the very
6 beginning of this trial. But it bears repeating. When
7 Tamerlan decided that it was time, his little brother went with
8 him. And once he did, he was all in. But the evidence will
9 show that, if Tamerlan hadn't led the way, Jahar would never
01:32 10 have done any of this no matter what was on his computer and no
11 matter what kinds of songs he listened to. How do we know
12 that? First, because Tamerlan's motivation to commit this
13 attack was so much stronger and had existed for much longer;
14 secondly, because their personalities were so different; and,
15 third, because Tamerlan had power over Jahar.

16 Our case is going to start today with some of the
17 people who encountered Tamerlan in the last months before the
18 bombings and can describe a little about what sort of person he
19 was, at least near the end. Now, it's probably going to be
01:33 20 hard for some of these people to testify. They may be scared,
21 and they may show it. But they should be able to shed some
22 light.

23 We'll start at the Islamic Society of Boston, which is
24 a mosque on Prospect Street in Cambridge where Tamerlan used to
25 go. And you'll hear about how, six months before the bombing

1 and four months before the bombing, Tamerlan had come to the
2 point where he had interrupted Friday sermon, the most sacred
3 service of the week, screaming and yelling at the Imam, the
4 minister, in the middle of the ceremony because Tamerlan had
5 got to the point where he was so sure that he knew what was
6 true and everyone else did not that he could take that extreme
7 step. And he did, not once but twice, and you'll hear that
8 described by people who were there.

9 You'll get a little bit of a picture of what Tamerlan
01:34 10 was like on the street, picking fights with people sort of
11 randomly about religion, aggressive, extreme, and walking
12 around dressed in flowing white robes like a Saudi sheikh, not
13 the clothes of the Chechen people, where he originated from,
14 but something very, very different.

15 You'll learn that about 15 months before the bombing,
16 in January 2012, Tamerlan left his wife and his one-year-old
17 daughter to travel to Russia with plans to go into the forest.
18 That means to join radical jihadi fighters, insurgents there.
19 And relatives who have come here from Russia will describe,
01:35 20 with the help of a translator, how fanatical and unreasoning
21 Tamerlan seemed to them when they saw him in 2012 during that
22 visit.

23 You'll also learn that Tamerlan was a very tough guy,
24 a good boxer, who was suspended from high school for assaulting
25 another student and who was later arrested for assaulting his

1 own girlfriend. Tamerlan turned a lot of people off, as you'll
2 hear, from his angry aggressive preaching. But he also clearly
3 had a kind of magnetism because he was able to pull a young
4 college student from Rhode Island into his gravitational field.
5 And she became his wife, the mother of his child, and took on
6 the role of a conservative Muslim mother and wife, swathed in a
7 traditional head covering, a hijab, and working long hours as a
8 home healthcare aid for people with disabilities while he
9 stayed home and obsessively cruised the internet for scenes of
01:36 10 massacred women and children in the Middle East, jihadi warfare
11 in Russia, and fundamentalist preaching about the fires of hell
12 that awaited any Muslim man who did not step up and fight.
13 That was his world.

14 We'll have to reconstruct who Tamerlan was from people
15 who knew him, from FBI reports, and other evidence about his
16 attempts to join the jihadi insurgents in Russia in 2012. And
17 we'll see that he had already been planning to wage jihad in
18 Russia back when Jahar was still a 17-year-old high school
19 senior. Some of the evidence about Tamerlan will come from
01:36 20 documents, not witnesses, because the witnesses aren't
21 available. So part of our case is unavoidably going to have to
22 involve reading the important parts of FBI interviews and
23 email. That will not be as gripping as some of the
24 unforgettable testimony that you have heard from the witness
25 stand in the last few weeks. But it will be important because

1 it will shed some light on why Tamerlan set himself and his
2 brother on this terrible course.

3 In this part of the trial, we'll also be able to show
4 you the rest of what was on Tamerlan's Samsung computer.
5 Remember Mark Spencer, the forensic computer analyst? He will
6 come back and unpack what we were not able to show you at the
7 first part of the trial. The first phase, you were mostly
8 limited to what was on Jahar's computer. In isolation, his
9 computer created the impression that he had "self-radicalized,"
01:37 10 and that was the way the government presented it. It looked
11 horrible because the computer had documents on it which you
12 could, if you wanted to, sort of match up to the facts of the
13 crime. And so it looked like Jahar was taking his direction
14 directly from things he was getting online or downloading from
15 the internet or wherever, that he was the one, he was the
16 motivating force, that it had started with him. That was the
17 impression that was created because you were not seeing him in
18 context.

19 But the picture looks very different once you open up
01:38 20 Tamerlan's computer and compare because not only was the
21 radical material on Jahar's computer, mostly dumped there by
22 Tamerlan, as you began to hear a little bit of in the first
23 phase of the trial, but because Jahar's radical internet
24 activity was just a faint echo of Tamerlan's. What Tamerlan's
25 computer shows is obsession. He was consumed by jihad. It had

1 become almost all he did and all he thought about.

2 Comparing Tamerlan's computer to Jahar's leaves no
3 doubt as to where the impulse for the Boston Marathon bombing
4 came from, who drove this plot, and who just followed, not just
5 who bought the parts, not just who built the bombs, not just
6 who led the way, but where the fuel for this came from, the
7 fanatical emotions and ideology that propelled this crime.

8 We all know that younger brothers tend to look up to
9 older brothers, especially when there is an almost seven-year
01:39 10 difference between them. But the evidence here will show that
11 this was especially true here for two reasons: one was the
12 culture into which Tamerlan and Jahar were born and in which
13 they were raised, and the other has to do with their own
14 particular family. So when the older brother went off the
15 rails in this family, there was every reason to expect that he
16 would pull the younger brother with him.

17 To get oriented, we'll call a historian called Michael
18 Reynolds probably tomorrow. Professor Reynolds teaches at
19 Princeton, and he studies the part of the world where Russia
01:40 20 meets the Middle East, the Islamic Southern Caucasus Region of
21 Russia. Let's get oriented. Let's go back out for a minute.
22 This is the map that shows the great distances involved.
23 There's us. There's Chechnya and Dagestan, the South Caucasus,
24 and here, as you'll learn, is where Jahar spent the first six
25 years of his life. And Professor Reynolds will explain the

1 history behind that. This is the country of Kyrgyzstan, which
2 is actually on the border of China. Want to bring it up?
3 Expand.

4 So here is the region of Southern Russia and Central
5 Asia in which our family's story begins. Professor Reynolds
6 will just give you some background. His testimony is not going
7 to explain why this happened. It's just going to give you some
8 background, some sense, of who this family was, where they came
9 from, what their story is, so that you can have a fuller
01:41 10 understanding of who they are, of who Tamerlan is, was, and who
11 Jahar is.

12 Professor Reynolds will tell you who the Chechen
13 people are, a people who have lived independently in the
14 mountains of Southern Russia for thousands of years. He'll
15 tell you a little about their culture. It is a patriarchal
16 culture. He'll explain the reasons why it developed the way it
17 did. Importantly for our story, what that means is that it is
18 a culture in which in each family the father is all powerful,
19 and the eldest brother has tremendous power. And when the
01:42 20 father can no longer fulfill his role, the elder brother rules
21 the family.

22 While he's here, Professor Reynolds will also tell us
23 a little bit about the fate of Chechnya in the modern world.
24 It's a small country, still about only a million people. He'll
25 tell you about what has happened in Chechnya over the last 20

1 years in the course of two appalling wars, two invasions by
2 Russia, in which countless thousands of people have died, and
3 much of the country has been laid waste. He'll explain that
4 the Chechen wars began as a nationalist uprising, not a
5 religious war at all but just -- by people who wanted to be
6 free of Russia. But after unimaginable death and destruction,
7 violent Islamist jihadis have effectively hijacked the
8 struggling Chechnya so that when a young Chechen overseas goes
9 online to find out about his roots and his origin, what pops up
01:43 10 is sophisticated extremist propaganda. You'll see some
11 examples of that.

12 Professor Reynolds will give you a very small sample
13 of things Tamerlan was doing online. He speaks fluent Russian,
14 by the way, and a great deal of this material is in the Russian
15 language. And that was why we thought it was important to get
16 his help in explaining what was there, what Tamerlan's online
17 world had begun. And we hope that some of this material will
18 give you some little sense of the deadly allure of this stuff.
19 And he'll point you to some of the clues on Tamerlan's computer
01:44 20 that shows quite precisely, with recordings of his own voice,
21 what he was thinking and doing in Russia when he was there in
22 2012.

23 Now, let me be clear about something. To say that
24 Tamerlan had power over Jahar does not mean that Jahar had no
25 freewill. Jahar could and did try to get around Tamerlan. He

1 hid his own pot smoking from him all the time. Around his own
2 friends, Jahar is somebody who seemed independent and cool or
3 chill. And the government, I'm sure, will point that out
4 before we're done.

5 But the idea the younger brother follows and supports
6 the older brother is part of who they both were. Culture is
7 what's bred in the bone. And a family like Jahar's, turn your
8 back on your older brother and you are no one. So Jahar did
9 not defy Tamerlan to his face, not ever. And when Tamerlan
01:45 10 made a decision, Jahar's role was to support him.

11 Now, of course, the cultural rules that I've mentioned
12 and the historical experiences apply to a lot of people who
13 never become violent. So we'll need to widen the frame and let
14 you know a little bit about Jahar's family of origin because
15 part of the reason why Tamerlan had such power, why he became
16 so extreme, and why he was left in charge of Jahar when the
17 parents both left for Russia for the last time in mid-2012, has
18 to do with his particular family. It's a long and complicated
19 story, but I'll try to outline the bare bones of it right now
01:45 20 for you.

21 I told you that Jahar was born in Kyrgyzstan, which is
22 a country almost to China. It used to be part of the Soviet
23 Union, very, very far from Chechnya, very far from the North
24 Caucasus. Professor Reynolds will explain, the historical
25 reason for that is that the entire Chechen people were loaded

1 onto cattle cars and deported en masse, in the third week of
2 February 1944, in the middle of World War II, by Joseph Stalin,
3 and dumped in Central Asia, 2,200, 2,400 miles away, a third to
4 a half of the Chechen people died during that, what was one of
5 the great crimes of the 20th Century, something that very few
6 people know anything about. I mention that only because it
7 explains why Jahar, in a Chechen family, grew up thousands of
8 miles from Chechnya and has never set foot there.

9 Jahar's father, Anzor Tsarnaev, was born in
01:47 10 Kyrgyzstan, in the Chechen exile there, of parents who were
11 both child survivors of those cattle cars. And Jahar's mother,
12 Zubeidat Tsarnaeva, was born back in the Caucasus. She is not
13 Chechen. She is a member of the Avar ethnic group in a region
14 called Dagestan, which is right next to Chechnya. And they
15 might never have met but for the fact that she was living with
16 a brother in Siberia. Anzor was in the Soviet Army in Siberia.
17 They're teenagers. She's 18; he's 19. They meet. They marry.
18 He brings her back to meet his family in Kyrgyzstan.

19 And immediately his family realized that something is
01:47 20 very seriously wrong. Chechen culture puts great emphasis --
21 it insists upon modesty, self-effacement. And Zubeidat was
22 everything that Chechen culture does not permit. She was loud.
23 She was over the top. She was self-aggrandizing. And Anzor's
24 family rejected her, said she cannot be part of our family.
25 Send her back. But he didn't. He stayed with her.

1 And thus began 15 years of wandering, of intermittent
2 traveling and trips in which, for thousands and thousands of
3 miles across Central Asia, Siberia, back to Chechnya and
4 Dagestan, while the couple had four children, starting with
5 Tamerlan in 1986 and ending with Jahar in 1993. These are the
6 moves, the relocations, that this couple, and eventually their
7 four children, made between 1985 and when they left for America
8 in 2002. And this gives you some sense of the instability, the
9 turmoil, in which these children first entered the world.

01:49 10 The pattern of this nomadic life was always the same.
11 Anzor and Zubeidat would head off to some new place with great,
12 unrealistic hopes and ended up having to go back to Anzor's
13 family in Kyrgyzstan to bail them out, give them a place to
14 live, put them back on their feet. They tried to return to
15 Chechnya in the early 1990s but had to go back to Anzor's
16 relatives in Central Asia just before the first Chechen war
17 began, just before Russia attacked, to such devastating effect,
18 1994. In 2000, they thought it would be a good time to move
19 back to Dagestan just as the second Chechen war was getting
01:50 20 underway and as war broke out in the region, a terribly
21 dangerous time for them to be going where they went.

22 Finally, Anzor's relatives saw what desperate shape
23 this family was in and helped them emigrate to the United
24 States. And they arrived in Cambridge, Massachusetts, in 2002,
25 with higher hopes than ever. But nothing worked out. They

1 worked hard and they tried everything, but within a couple of
2 years both parents were diagnosed with serious mental illness,
3 and their family's disintegration had begun. Anzor especially
4 was badly damaged. He worked as a self-employed auto mechanic,
5 fixing cars outdoors in empty lots and in parking spaces on the
6 street. He worked hard, but he never learned English well
7 enough to get a regular job, and his physical and mental
8 illnesses were soon severe enough that he was placed on S.S.I.,
9 although he continued to work as much as he could.

01:51 10 Later on in this hearing, you'll see some of his
11 medical and psychiatric records, and you'll see how afflicted
12 he was with Post-Traumatic Stress Disorder, with organic
13 delusional disorder, with panic attacks over the ten years in
14 which he -- that he spent in Cambridge. Anzor, the man in the
15 family, was supposed to lay down the law, make sure everyone
16 did what was expected of him, but he was too sick to fulfill
17 that role. And eventually, as you'll see, that would leave
18 Tamerlan in charge.

19 Zubeidat also worked hard, but she had wildly
01:52 20 unrealistic dreams that went nowhere. She took what she
21 wanted. She got in trouble with the law. She alienated much
22 of the small Chechen community in Boston. She proved a
23 destructive force in the lives of everyone around her. She was
24 desperate for praise and validation, and her children existed
25 to reflect glory back on her. As her dreams in America began

1 to crumble, Zubeidat began to turn to fundamentalist religion,
2 and she made sure that Tamerlan learned about it, too.

3 Although the family had not been very religious in
4 Russia and nor when they first lived in Cambridge, after
5 several years in Boston, Zubeidat began to dress all in black
6 and in the -- with a hijab, a head covering, like a devout
7 Muslim woman in the Middle East, and she was becoming more and
8 more radical in her thinking. Her own family in Russia was,
9 and still is, as you'll hear, mystified by the changes.

01:53 10 But throughout all this, the oldest son, Tamerlan, was
11 the answer to all the family's mounting problems. He was going
12 to be a boxing champion and compete for the United States in
13 the Olympics. He was going to go to Harvard. He was going to
14 become a famous musician. He was going to become a lawyer. He
15 was going to become a dentist. He could do anything. Tamerlan
16 was the reason the family existed. Only great things lay
17 ahead. What made this so wonderful for Zubeidat was that
18 Tamerlan loved and adored his mother so much. That was the
19 atmosphere of maternal delusion in which Jahar grew up. He not
01:54 20 only had an older brother to look up to obey, but his older
21 brother was Superman.

22 But the evidence will show that Tamerlan failed at
23 everything. After a mediocre high school career, he made three
24 tries at community college and music school and dropped out or
25 never even attended all three times. He had almost no

1 legitimate work history, just a handful of occasional
2 low-paying jobs. Despite his deepening interest in Islam, he
3 spent most of his time drinking, chasing women in clubs,
4 partying, smoking pot. His boxing career petered out partly
5 because he never obtained his U.S. citizenship, as you'll
6 learn, but also for what looks like lack of motivation. After
7 he married and fathered a child, his wife went to work, as I've
8 told you, as a home healthcare aid, to support the little
9 family while Tamerlan stayed home becoming steadily more
01:55 10 focused on extremist ideas that he was absorbing online. By
11 the end of 2012, Tamerlan had received an eviction notice. He
12 was about to lose the only home that the family had ever had in
13 America. But Tamerlan was ready to step into an alternate
14 reality where none of this would matter, where he would be
15 important, where he would be remembered; and in all the world,
16 there was one person he could take with him.

17 In 2009, Anzor is badly beaten in a parking lot
18 outside a restaurant where he had gotten into some kind of
19 argument. His skull is bashed in. His brain is damaged. And
01:55 20 his psychiatric problems become even worse than they already
21 were. In 2012, in January, as I've told you, Tamerlan leaves
22 his wife and his one-year-old daughter to go to Russia to wage
23 jihad. Anzor leaves for Southern Russia for Dagestan in May,
24 telling people he is going home to die. Tamerlan comes back
25 from Russia in July 2012 having failed to find a holy war to

1 fight in. His mother Zubeidat leaves for Russia in September.

2 Jahar has just turned 19. He's a sophomore in
3 college. He's drifting and he's failing. Now Tamerlan is in
4 charge. He has always been the most important member of the
5 family, and now he's the last adult family member in Jahar's
6 life. The evidence about Jahar will look very, very different
7 in what I've just described to you. Through all of the family
8 chaos and that tiny, two-bedroom apartment that you've already
9 seen, he was the quiet, helpful kid who did his homework, cared
01:57 10 for his relatives' children, was loved by his teachers and
11 appreciated by his friends. He didn't beat anyone up. He
12 didn't take advantage of people. He did well in school.

13 You'll hear from a few of his friends in high school
14 and college. It's hard for them to come forward now. But some
15 of them will. Even Stephan Silva, remember him? The
16 government's witness who was hoping for a good deal on his own
17 charges. He didn't have a lot of running room to say anything
18 nice about Jahar, but he still did. One of the realist and
19 coolest kids he knew, he said. Never seen him violent. Never
01:57 20 picked on anybody. But no one said -- no one says anything
21 like that about Tamerlan. When people who knew Tamerlan heard
22 that he'd bombed the Marathon, it kind of fit. But people who
23 knew Jahar were stunned.

24 Now, I'm sure there are people now who don't want to
25 hear what Jahar was like all through elementary and high

1 school. That's understandable, at least for people who don't
2 sit where you do. But it's all true. He was a good kid. Now,
3 the government will tell you that the good kid was a fake and
4 that only the Jahar that followed his brother down Boylston
5 Street was real. But does that really make sense? When did
6 this fake self start? College? Twelfth grade? Eleventh?
7 Tenth? Was he fake when he was eight? What about when he
8 started that Al-Firdaus Islamic Twitter account a month before
9 the bombings, the Twitter feed that the government made such a
01:59 10 big deal about during the first phase of the trial? Was he
11 faking when he lost interest after seven tweets? It doesn't
12 really make sense. I think, when you look at all the evidence,
13 you'll find that Jahar really was what he appeared to be: a
14 lost teenager with very little motivation to do anything much
15 on his own, who had been raised all his life to take direction
16 from the most powerful adult, by 2013, the only powerful adult
17 in his world.

18 When you look at all the evidence -- that reminds me
19 of something that happened last week: the still photo of Jahar
02:00 20 with his middle finger out. I could almost hear you gasp when
21 Miss Pellegrini put that still up on the easel. And she did it
22 between those four photographs of the victims, those beautiful
23 photos of those people so young and full of promise. And it
24 took us a whole day before you found out what you had and
25 hadn't seen because, when you finally got to see the 30-second

1 clip, it turned out that that shocking gesture wasn't quite as
2 advertised.

3 What you saw was that Jahar had just been unchained
4 after who knows how many hours, and he starts looking and
5 walking around his cell. He finally has use of his hands. He
6 starts to fiddle with his hair and starts using the plastic
7 housing of the security camera as a mirror. Then he stands up
8 close to it. He flashes a peace sign and, for just a split
9 second, sticks out his middle finger. To who? To himself?

02:01 10 What did it mean? It meant that he was acting like an immature
11 19-year-old is what it meant.

12 Then there's his facial expression which looks like a
13 sneer until you know -- and there will be evidence about this
14 later on -- that he had been shot in the face on April 19th,
15 and his face was slightly twisted to one side by the wound.
16 You can still see some of the effects of that wound on the left
17 side of his face and his closed left eye. You also found out
18 that the deputy marshal who saw whatever it was didn't think
19 anything of it until the order came from higher-ups two days
02:02 20 later to write a little report. Enough said about that, more
21 than enough.

22 But it's worth remembering for this reason: because
23 it's an example of how you can't ever accurately evaluate
24 anything, not even a picture, until you know the context.
25 Whether it's a grainy still from a surveillance camera or a

1 young man's life, you have to know the context.

2 You'll also hear a little bit in this trial about
3 where Jahar will go if you punish him with life in prison.
4 This is another photograph of ADX. Can you see it on your
5 monitors? This is where the government keeps other terrorists
6 who used to be famous but aren't anymore. It's a place so
7 secure that he won't even be able to glimpse the outside world.
8 All you can see from the narrow cell windows or from the small,
9 one-man exercise cages is a patch of sky. It's right near the
02:03 10 Rocky Mountains, but no one in the prison can see that.

11 Importantly, communications are strictly limited, and
12 the few that are allowed are monitored in real time. There is
13 no privacy. There is a video camera trained on the inside of
14 his cell and on him every minute of the day. There are no
15 interviews with the news media. There will be no
16 autobiography. There will be no messages relayed from Jahar
17 onto the internet. There will be no nothing. There will be no
18 media spotlight coming back on him as an execution date
19 approaches. And one important thing you'll learn is that the
02:04 20 FBI and the U.S. Attorney's Office here in Boston are in a
21 position to help ensure that Jahar is cut off from the outside
22 world forever if they think it best.

23 So the evidence will show that if you sentence Jahar
24 to a lifetime of thinking about what he did, you'll both punish
25 him and protect society at the same time.

1 The government has called a number of expert
2 witnesses, and we expect to call some experts, too, to shed
3 light on particular issues or items of evidence. I'm not going
4 to tell you about them all now, but I do want to mention one.
5 Dr. Jay Giedd is one of the country's top researchers on how
6 the human brain matures and what that means for adolescent
7 behavior.

8 Everyone who's ever been or raised a teenager knows
9 that they don't have the same judgment and maturity as adults.
02:05 10 The death penalty law recognizes that by drawing an absolute
11 line at age 18. Under 18, even by a single day, no one can
12 even be considered for the death penalty no matter how horrible
13 the crime that he commits. Well, in April 2013, Jahar was 19.
14 He was 21 months past his 18th birthday. But he was still at
15 an age too young to legally buy a beer, at which many, many
16 people make horribly bad self-destructive decisions, the sort
17 of decision that leave the people who know them and care about
18 them thinking, asking, What was he thinking?

19 And one of the things you'll each have to decide for
02:06 20 yourself is how to weigh his young age as an mitigating factor,
21 that is, as a factor against imposing death. In the last few
22 years, modern science has begun to understand why it is that
23 adolescents so -- it's such a characteristic of adolescents to
24 make such terrible decisions.

25 As Dr. Giedd will explain, the answer has to do with

1 the way the different parts of the brain mature at different
2 rates. The impulse, risk-taking parts of our brain mature
3 before the parts that regulate our actions, our judgment, and
4 help us weigh consequences. So adolescence is a time when
5 we're like cars with very powerful engines and faulty brakes.
6 It's a time to be more stirred by powerful emotions, rage at
7 supposed injustice, love for a charismatic older brother, and
8 less by logic and good judgment.

9 Now, Dr. Giedd will make clear that no one can say
02:07 10 where a particular individual is on the path to maturation, and
11 he certainly will not suggest, and neither will we, that Jahar
12 could not have controlled his behavior because of his age or
13 for any other reason. Let me say that again. Nothing you're
14 going to hear from the defense in the coming days is going to
15 suggest that Jahar couldn't control himself. No one is going
16 to say that he didn't know what he was doing. No one is going
17 to say that his brother actually forced him to commit these
18 horrible crimes. And no one is going to tell you that you
19 should feel sorry for him.

02:07 20 But when all is said and done, the evidence will still
21 show that Jahar was the 19-year-old little brother. And
22 considered with everything else, we think it will show that, as
23 awful as this crime was, a lifetime in prison to face what he
24 has done is the better choice for everyone. Thank you.

25 THE COURT: Mr. Fick.

1 MR. FICK: The defense calls Laith Albehacy.

2 LAITH ALBEHACY, Sworn

3 THE CLERK: State your name. Spell your last name for
4 the record. Keep your voice up and speak into the mic so
5 everyone can hear you.

6 THE WITNESS: My name is Laith Albehacy, L-a-i-t-h,
7 A-l-b-e-h-a-c-y.

8 DIRECT EXAMINATION BY MR. FICK:

9 Q. Good morning, Mr. Albehacy.

02:10 10 A. Good morning, sir.

11 Q. Are you here today in compliance with a subpoena that we
12 issued to you?

13 A. Yes.

14 Q. Did you want to come here today?

15 A. To be honest, at the beginning I didn't want to come, but
16 now I'm here. So I'm ready to do it, yeah.

17 Q. Thank you, sir.

18 A. You're welcome.

19 Q. How old are you, Mr. Albehacy?

02:11 20 A. I'm 46.

21 Q. What's your educational background?

22 A. I have a bachelor of commerce.

23 Q. From what institution?

24 A. From Egypt.

25 Q. Okay. Egypt is where you were from originally?

1 A. Yes. I'm originally from Egypt.

2 Q. How long have you been living in the Boston area?

3 A. I came to Boston 2008.

4 Q. Back in April of 2013, where were you working at that
5 time?

6 A. I was working at Al-barra Market in Cambridge.

7 Q. How long had you been working there?

8 A. Since I came to the States, in 2008.

9 Q. Okay. So a number of years?

02:11 10 A. Yes, almost seven years.

11 Q. What was your position there?

12 A. I'm the store manager.

13 Q. Okay. What kind of store is it?

14 A. It's for Middle Eastern food stuff and have meat and
15 chicken.

16 Q. Geographically in Cambridge, is it near the Islamic
17 Society of Boston mosque on Prospect Street?

18 A. Yes. It's about two blocks away from the mosque.

19 Q. Were you working on the afternoon of April 15, 2013?

02:12 20 A. Yes, I was.

21 Q. While you were working, did you hear about the explosions
22 at the Marathon?

23 A. Yes, I did, I did, through a customer. He came and told
24 me there's something happen during the Marathon. And I watched
25 the news on my laptop.

1 Q. Now, sometime after you had heard about the explosions,
2 did you encounter a person in the store, coming into the store
3 as a customer, who you later learned to be Tamerlan Tsarnaev?

4 A. Yes.

5 Q. Now, is Tamerlan Tsarnaev somebody you had seen in the
6 store before?

7 A. I saw him a couple of times, yes.

8 Q. Over the years you worked there?

9 A. Yes, about maybe every two, three months, I see him.

02:13 10 Q. Every two, three months?

11 A. Yeah. I work there only three days a week, so --

12 Q. Now, on the afternoon of April 15 of 2013, can you
13 describe your interaction with Tamerlan Tsarnaev on that day?

14 A. Can you repeat the question, please?

15 Q. On April 15, 2013, can you describe your interaction with
16 Tamerlan on that day?

17 A. When he came that day while I was watching the news on my
18 laptop. And I think he grabbed some cookies or chocolate. And
19 I told him, Do you heard about the bomb, the Marathon bombing?

02:13 20 And he said no. And I told him, as a joke, You're not the one
21 who did it? And he smiled to me and he said no.

22 Q. And what happened then?

23 A. And then he left.

24 Q. He just bought some cookies and candy and left?

25 A. Yes. As far as I remember, he just bought something.

1 Q. From your prior encounters with Mr. Tsarnaev in the store
2 over the years, how would you describe him physically, his
3 demeanor? What do you mean by him?

4 A. Well, he's a big guy. He's a muscly guy. And to be
5 honest, the conversation between me and him, it was only, like,
6 normal chatting, like, Hi, how are you? How is everything?
7 How is your daughter? Because he has a daughter same age as my
8 daughter. So most of the conversation was about how is the
9 girl and does she speak? Does she walk? That's it. No more.

02:14 10 Q. Did you have any observations of how he sort of -- how he
11 carried himself, how he shook hands with you?

12 A. He's a big guy, so when he shake your hand, he just --
13 he's -- what you can say -- is proud of his muscles. Like, he
14 show off that I'm a big guy, and I can squeeze your hand.

15 Q. Now, in addition to seeing him at the store -- first of
16 all, let me ask you: Do you sometimes yourself attend the
17 Islamic Society mosque on Prospect Street?

18 A. Yes, I do. Every Friday in the Jumu'ah prayer, I work in
19 the store, and we close during the prayer time, and I go to
02:15 20 pray and come back to work.

21 Q. And did you observe an incident involving Tamerlan
22 Tsarnaev at the mosque in the fall of 2012?

23 A. I did, yes.

24 Q. Can you describe what you observed?

25 A. Well, I think it was before the election. And to be

1 honest, I can't remember which election, the presidential
2 election or the governor of the city. And Imam, during the
3 speech, the lecture, at prayer, he was saying that -- he was
4 encouraging everybody to go and elect and choose one of the
5 guys. And then we have -- by participating in the election, we
6 can be a full-time citizen and so on and so on. He didn't like
7 that. So he stood up, and he told him we shouldn't do that.

8 Q. Do you remember any of the words he used?

9 A. He called the Imam, You are monafiq. Monafiq means, like,
02:16 10 hypocrite.

11 Q. What was his demeanor like? What did his voice sound
12 like?

13 A. He always -- as I said, he's full of -- he's proud of his
14 muscles and his voice. When he talks, he's loud. He doesn't
15 speak -- he has loud voice, yeah.

16 Q. Did he make any gestures or anything like that?

17 A. Say it again, please.

18 Q. Did he make any gestures with his hands as he did this?

19 A. Yeah. He said to Imam -- when he was talking to the Imam,
02:16 20 he was using his hand.

21 Q. How long did the interruption last?

22 A. A few seconds, maybe ten, twenty seconds, and he -- then
23 he sat down.

24 Q. Okay. Now, were you there for a second incident involving
25 Tamerlan a few months later?

1 A. Yes, I was there.

2 Q. Can you describe what happened that time?

3 A. That week, it was Martin Luther King week or holiday, and
4 also it was the Prophet Mohamed's, Sallah Allah alihe wa Salam,
5 birthday. So, as Muslims, we celebrate the birthday of the
6 prophet, Sallah Allah alihe wa Salam. So the Imam was saying
7 that this week we have Martin Luther King and he was a great
8 guy, and he did so and so for human rights and for -- the
9 history of Martin Luther King as everybody knows. Also in the
02:17 10 same week we have the Prophet Mohamed, Sallah Allah alihe wa
11 Salam. He did that for mankind. He was doing comparison
12 between Martin Luther King and the Prophet Mohamed, Sallah
13 Allah alihe wa Salam.

14 The first part of the speech was in Arabic, so I think
15 he didn't understand what was going on.

16 Q. When you say "he," who do you mean? Are you referring to
17 Tamerlan?

18 A. Yes, yes, sorry.

19 And then when the second half Imam say in English.

02:18 20 And when he start to do it to compare between Martin Luther
21 King and what he did and the Prophet Mohamed, Sallah Allah
22 Alihe wa Salam, he didn't like it. And he stood up and he
23 said, Imam, you are monafiq. He didn't like it, and he was
24 shouting at him.

25 Q. He was shouting this time?

1 A. Yeah. He was saying that he shouldn't do this. This is
2 -- you cannot compare the prophet with kafir person. Kafir is
3 infidel. So he was saying that. You cannot compare the
4 prophet himself and a kafir person.

5 Q. How long did this incident last?

6 A. Again, maybe 30 seconds or something like that. I can't
7 remember to be honest.

8 Q. How did it end? What happened?

9 A. He look at everybody in the masjid and he said, You guys,
02:19 10 you should kick him out or he should go. People tell him, No,
11 you go out. And then he left.

12 Q. Thank you, Mr. Albehacy. I have nothing further for you.

13 A. Thank you.

14 CROSS-EXAMINATION BY MR. CHAKRAVARTY:

15 Q. Good morning.

16 A. Good morning, sir.

17 Q. I'm one of the prosecuting attorneys.

18 Mr. Albehacy, when Tamerlan came to the -- your store,
19 the Al-barra, on April 15th --

02:19 20 A. I don't own the store. I work there.

21 Q. I'm sorry. You don't own the store. You're just an
22 employee?

23 A. Yes.

24 Q. Do you still work there?

25 A. Yes, I do.

1 Q. He came to the store. And you had seen him before?

2 A. Yes, a couple of times.

3 Q. Before April 15 of 2013?

4 A. Yeah.

5 Q. Had you seen him in the few months between these incidents
6 at the mosque and the bombing?

7 A. I think so, yeah.

8 Q. Is that the time period where he would attend the store?

9 A. Yes.

02:20 10 Q. And he was pleasant with you?

11 A. Yes.

12 Q. When he came, he actually -- I think one time he came with
13 his young daughter, correct?

14 A. Yes, he did.

15 Q. And he was pleasant with her?

16 A. Yes, he was.

17 Q. When he came on April 15, 2013, and he bought -- I think
18 you said cookies and maybe chocolate?

19 A. Yes. Normally he buys cookies and chocolate for the
02:20 20 daughter.

21 Q. He was alone on that day, correct?

22 A. On the day, the day of the incident? Yes, he was alone.

23 Q. And your store is very close to the masjid on Prospect
24 Street?

25 A. Two blocks away from the mosque.

1 Q. Is there also a Whole Foods on that street?

2 A. Yes.

3 Q. That's not far as well, correct?

4 A. No.

5 Q. And you didn't see the defendant come into the store that
6 day, correct?

7 A. Who?

8 Q. The defendant, the person seated at counsel table.

9 A. No, I never met him in my life.

02:21 10 Q. He had never come into that store before?

11 A. I don't know. But I never met him in my life.

12 Q. You didn't see a car waiting outside?

13 A. On that day?

14 Q. On April --

15 A. No, I didn't see.

16 Q. How long was Tamerlan in your store?

17 A. Maybe a half minute.

18 Q. He just came in?

19 A. Yeah.

02:21 20 Q. Said a few things and then left?

21 A. Yes.

22 Q. With regards to the incidents that occurred at the masjid
23 with Tamerlan rising, would you agree with me that it's not
24 usual for somebody to challenge the Imam at the masjid?

25 A. It's unusual.

1 Q. It happens sometimes but it's not --

2 A. Not usual, yeah. You shouldn't do that, yeah.

3 Q. Was that the first time that you had seen Tamerlan to be
4 loud and obnoxious?

5 A. Yes.

6 Q. Would you agree with me that the position that he took was
7 a pretty extremist position, that you should not participate in
8 elections?

9 A. I cannot decide if extreme or not, but I think it's --
02:22 10 also I'm not very -- I'm not scholar'd to decide, but I think
11 it's unusual.

12 Q. Unusual here in America?

13 A. In the masjid. You shouldn't interrupt the Imam.

14 Q. Okay.

15 A. It's rude.

16 Q. Okay.

17 A. Yeah.

18 Q. Is it the rudeness that was unusual or the substance of
19 what he was saying that was unusual?

02:22 20 A. I think both, yeah.

21 Q. And do you remember who the Imam was that day?

22 A. Yes, I do.

23 Q. Who was it?

24 A. His name is Loay.

25 Q. Was he the Imam on both days?

1 A. Yes, he was.

2 Q. After the interruption, did people at the masjid attempt
3 to talk to Tamerlan?

4 A. To be honest, I work, so I just run to the masjid to pray
5 and run back to open the store because after praying time it's
6 very busy in the store. Most of the people finish praying and
7 then go to the store, so I have to run. So I didn't see what
8 happened after that.

9 Q. So, regardless, after the first interruption around
02:23 10 November of 2012, Tamerlan continued to attend the masjid?

11 A. Yes, because he was there on the second time.

12 Q. He was there at the second time. Did you see him after
13 that at the masjid?

14 A. To be honest, I can't remember.

15 Q. When he -- after the interruption, did you talk to
16 Tamerlan about that?

17 A. No, I didn't talk to him about this incident.

18 Q. Did you talk to the management of the masjid about what
19 they were going to do about Tamerlan?

02:24 20 A. No, I did not.

21 MR. CHAKRAVARTY: That's all I have, your Honor.

22 THE COURT: Mr. Fick, anything else?

23 MR. FICK: No, your Honor. Not for this witness.

24 THE COURT: Mr. Albehacy, thank you. You may step
25 down.

1 THE WITNESS: Thank you, sir.

2 THE COURT: I think we'll take the morning recess at
3 this point.

4 THE CLERK: All rise for the Court and jury. Court
5 will take the morning recess.

6 (Recess taken at 11:07 a.m.)

7 THE CLERK: All rise for the Court and the jury.

8 (The Court and jury enter the courtroom at 11:35 a.m.)

9 THE CLERK: Be seated.

02:53 10 THE COURT: Mr. Fick?

11 MR. FICK: Thank you, your Honor. The defense calls
12 Mr. Loay Assaf.

13 LOAY ASSAF, duly sworn

14 THE CLERK: Have a seat.

15 THE WITNESS: Thank you.

16 THE CLERK: State your name, spell your last name for
17 the record, keep your voice up, and speak into the mic so
18 everyone can hear you.

19 THE WITNESS: My name is Loay Assaf. Last name is
02:54 20 A-S-S-A-F, as in "Frank."

21 THE COURT: Go ahead, sir.

22 MR. FICK: Thank you, Mr. Assaf.

23 DIRECT EXAMINATION

24 BY MR. FICK:

25 Q. Good morning.

1 A. Good morning.

2 Q. How are you currently employed?

3 A. I work at the Muslim American Society and MAS Boston
4 Society.

5 Q. And what are those organizations?

6 A. It's nonprofit organizations. One of them is the one
7 that's running the cultural center in Roxbury.

8 Q. And what do you do specifically? What is your position
9 with those organizations?

02:54 10 A. I'm the director of operations.

11 Q. And how long have you been working for those
12 organizations?

13 A. 2007, I think.

14 Q. Okay. And what is your educational background?

15 A. So I have a degree in electrical engineering, and I work
16 in management. That's --

17 Q. And where are your degrees from?

18 A. From the University of Georgia.

19 Q. Okay. And what was your prior work background prior to
02:55 20 coming to these nonprofits that you just mentioned?

21 A. So I used to be a program manager at Microsoft.

22 Q. At Microsoft?

23 A. Microsoft, yes.

24 Q. Thank you.

25 How long have you resided in the Boston area?

1 A. Since 1999.

2 Q. And do you have a family?

3 A. I have a family, yes. Wife and wonderful kids, four of
4 them.

5 Q. Thank you.

6 Have you worked over the years as a visiting imam at
7 mosques in the Boston area?

8 A. Yeah.

9 Q. Can you describe that a little bit, how long you've been
02:55 10 doing it and what you do?

11 A. So it all kind of started in -- maybe around 2002 when I
12 had my first daughter. I was giving speeches and different
13 lectures, and because of lack of imams and the people who can
14 give sermon, I start receiving invitations to give these
15 sermons in different mosques. You know, Muslims pray this
16 Friday -- pray at, like, a congregational mass every Friday.
17 So many mosques don't have imams, so they need somebody to
18 speak. So I start receiving these invitations. So since then
19 I've pretty much spoke every Friday. I would go to a different
02:56 20 mosque or center to give these speeches and sermons.

21 Q. And among those mosques, have you been a regular speaker
22 at the Islamic Society of Boston in Cambridge?

23 A. Yes, every third Friday of the month I usually go there.

24 Q. And what kinds of themes do you preach about?

25 A. So different things, depending on the community needs.

1 But my main kind of idea is trying to integrate the Muslim
2 community, the American society -- we're part of it; we should
3 participate in it -- and the prosperity of the whole society;
4 and also trying to fill the spiritual gap that they might have.

5 Q. Okay. Do you recall an incident at the Cambridge mosque
6 in 2012 when you were preaching involving a person you later
7 learned was named Tamerlan Tsarnaev?

8 A. Yes.

9 Q. Can you please describe what happened on that occasion in
02:57 10 the fall of 2012?

11 A. Sure. So during that period of time, there was an event
12 in the Muslim calendar called the Ashura, which is -- kind of
13 commemorate the time when Prophet Muhammad, peace be upon him,
14 migrated from Mecca to Medina, and he interacted with the
15 Jewish community there and learned that they're celebrating a
16 particular celebration.

17 So he asked them about this celebration and said this
18 is the time when Prophet Moses, peace be upon him, and the
19 Israelites were rescued from Pharaoh. That's why we're
02:58 20 celebrating it. So the Prophet, peace be upon him, he ordered
21 the believers then to celebrate and join the society by
22 fasting.

23 So I wanted to take advantage of this incident,
24 especially that this is kind of the right time frame for it,
25 everybody's celebrating the Ashura, they -- to take a lesson so

1 people can learn about, you know, how the Prophet did it,
2 integrate in this society, especially that many of those who
3 attend the prayers there and the ISB, the Islamic Society of
4 Boston, are mostly immigrants. So that was my message to them.

5 So during this sermon, I mentioned, you know, the idea
6 of, you know, we're here, many of us come, so nothing wrong for
7 us to be part of this society and, you know, celebrate
8 Thanksgiving is coming and -- because it was also around that
9 time. And Fourth of July, there are so many events that we
02:59 10 should, you know, celebrate.

11 At that moment, the older brother -- I didn't know his
12 name at that time; I didn't recognize him -- stood up, and he
13 was shouting at me and so angry and fired up that "This is not
14 Islamic. This is wrong. You should not say that," and he
15 would just keep repeating this. I kept quiet, silent, give him
16 the room to say whatever he want. I felt that awkward,
17 honestly, because usually people don't do this in such
18 ceremonies.

19 Later on he -- within a couple of minutes or so he
02:59 20 left the room and I continued the sermon. After we're done
21 with the service, he came back. And many people came kind of
22 to support me, and they say, you know, "This is wrong," and
23 they're trying, kind of, to calm me down. I was not so angry
24 to begin with. But he came, and people surrounded us.

25 I was hoping to kind of understand his point of view,

1 where he's coming from, so I had a dialogue with him explaining
2 to him my kind of basis, my -- the principles from which I'm
3 bringing my thoughts and asking him, you know, "Show me why
4 you're saying this is wrong, what -- on what basis?" And he
5 kept repeating the same thing, "This is wrong. This is not
6 Islamic. You should not say that," without giving me any proof
7 or any reference to, you know, events in the holy Qur'an or a
8 saying of the Prophet or any reference material that can be
9 used.

03:00 10 Then I think there were so many people around us, and
11 I cannot remember exactly how he left, but he left, and I then
12 left after that.

13 Q. Okay. And is it unusual for someone to interrupt a sermon
14 during the Friday prayers?

15 A. Oh, yes. The -- so in the tradition, the Friday prayer
16 sermon is like once a week. It starts by a sermon and then
17 followed by a prayer service. During the sermon, people are
18 not allowed to be distracted. Distraction means voiding the
19 whole prayer service.

03:01 20 And there is different saying of the Prophet, peace be
21 upon him, describing what distraction means. So in one of
22 these sayings he said if you turn to the person next to you and
23 say "hush," that's a distraction, and your prayer is voided.
24 Another saying he was describing that -- at the time they were
25 sitting on pillows because there were no carpets, and if you

1 touch and play with these pillows, that's a distraction and you
2 will void your prayer.

3 So imagine a person standing and shouting and putting
4 a whole act like this. That was my main concern, that he was
5 voiding his prayer. And people don't usually do this. I
6 haven't seen that happening before that time. That was my
7 first experience.

8 Q. So in other words, across all of the times you've given
9 sermons, this was the first time anybody interrupted like that?

03:02 10 A. Yes.

11 Q. Was there another incident involving Tamerlan Tsarnaev in
12 January 2013?

13 A. That's correct. Yeah.

14 Q. Can you describe that for us, please?

15 A. Sure. So again, January, third Friday, I come again. At
16 that time, it was the kind of the time we're celebrating Martin
17 Luther King Day. It was like within the week or so. So I take
18 advantage of this opportunity, try to highlight that Martin
19 Luther King is a great man, done a lot for his community. He
03:02 20 had the cause, and he fought for this just cause, and we can
21 see the fruits of his efforts.

22 So, again, as a Muslim community, we -- many of us
23 think and feel that a lot of our rights are not served. Again,
24 there are so many analogies there. So I want to kind of entice
25 people to be part of this society and speak up for their civic

1 rights and be part of the whole civic engagement movement.

2 So I was kind of approaching this from an angle that
3 it's not just Martin Luther King who's done that; it's many,
4 and pretty much all of the great people, including the prophets
5 in the past. And great people always had a mission to serve
6 the society. They cared less about themselves personally.
7 They were not selfish. They faced some opposition, and they
8 overcame that opposition by being persistent on the true path.

9 So I was mentioning different names, including Prophet
03:03 10 Muhammad, peace be upon him, as a role model for the Muslims,
11 and I also mentioned Martin Luther King. And when I mentioned
12 that, again, the older brother stood up, and he was fired up,
13 very hot. And you can see his face like tomato red. And he
14 was shouting that, "This is wrong. I remember you from last
15 time," and even his stance was fighting stance.

16 I later on, actually after the bombing incident,
17 learned that he was a boxer because he was doing something like
18 this (indicating). "I know you from last time. I remember
19 you," and he kept saying this -- "This is not Islamic. This is
03:04 20 not right, and you are hypocrite," kind of insulting me with
21 this.

22 And the people at the time was -- were shouting at
23 him, asking him to shut up and to sit down. That incident took
24 longer than the first one in terms of time. Then he left the
25 room.

1 Q. Did you ever see Tamerlan Tsarnaev after that day?

2 A. Face-to-face, no. Just on the TV when the -- after the
3 incidents.

4 Q. And you mentioned -- I think you called him the older
5 brother. Had you ever seen, in person, Dzhokhar Tsarnaev
6 before this day today?

7 A. No.

8 Q. So you learned -- in other words, you only learned that
9 they were the older and younger brothers after the bombing
03:05 10 events?

11 A. Yes.

12 MR. FICK: I have nothing further. Thank you,
13 Mr. Assaf.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Chakravarty?

16 MR. CHAKRAVARTY: Thank you, your Honor. Just a
17 couple of questions.

18 CROSS-EXAMINATION

19 BY MR. CHAKRAVARTY:

03:05 20 Q. When you talked to the older brother, Tamerlan Tsarnaev,
21 after the incident, did he persuade you about anything?

22 A. No. He didn't have much to say. He was just repeating
23 the same thing, the objection. My point of the conversation
24 was to understand his point of view, from which basis he's
25 coming. He didn't add anything. I felt that he's kind of

1 empty. He has basic understanding. He's more emotional rather
2 than rational in the conversation. I could not understand
3 where he's coming from.

4 Q. When he left, he left alone. Nobody went with him, right?

5 A. I cannot remember exactly, but there were so many people,
6 so I think when he left he was with a group of people trying to
7 kind of isolate him from me and from the masjid.

8 Q. And he left?

9 A. He left the room. I was still in the room, and he left
03:06 10 the room, yes.

11 MR. CHAKRAVARTY: Thank you.

12 THE COURT: Anything else?

13 MR. FICK: Nothing further, your Honor.

14 THE COURT: All right. Thank you, Mr. Assaf. You may
15 step down.

16 THE WITNESS: Thank you.

17 (The witness is excused.)

18 MR. FICK: And defense will next call Mr. Abderrazak
19 Razak, and I'd ask the interpreter to step forward as well.

03:07 20 DOSS BASHIER, interpreter, duly sworn

21 THE CLERK: Please state your name.

22 THE WITNESS: Doss Bashier, Arabic interpreter.

23 THE CLERK: Sir, would you please raise your right
24 hand.

25 ABDERRAZAK RAZAK, duly sworn

1 THE CLERK: Be seated.

2 State your name.

3 THE WITNESS: Abderrazak Razak.

4 DIRECT EXAMINATION

5 BY MR. FICK:

6 Q. Mr. Razak, can you please just state your name and spell
7 your last name for the record?

8 A. Okay. Abderrazak Razak, and my last name, it's R-A-Z-A-K.

9 Q. And perhaps for the court reporter, maybe we'll ask you to
03:08 10 spell your first name too, I think, in this instance. Thank
11 you.

12 A. Okay. First name? A-B-D-E-R-R-A-Z-A-K.

13 Q. Thank you. Good morning, Mr. Razak.

14 A. Good morning.

15 Q. And I'm going to suggest that maybe we start in English
16 and use the interpreter as a backup, if that's okay with you.

17 A. Just to make -- I'm not excellent in English, and I'm not
18 stupid in English, so I'm going to do my best.

19 Q. Thank you.

03:08 20 A. Because I'm in very, very serious situation. So if I
21 don't understand something, I'm going to ask my friend here to
22 help me. Thank you.

23 Q. Thank you, Mr. Razak. I appreciate that very much.

24 How old are you, sir?

25 A. Thirty-two years.

1 Q. And what is your educational background?

2 A. Okay. I finish my college in Morocco back home, in law,
3 public law.

4 Q. And, I'm sorry. You said Morocco?

5 A. Yes.

6 Q. Okay. And that's where you're from originally?

7 A. Yes.

8 Q. Do you live in the Boston area now?

9 A. Yeah. I live in Cambridge, Massachusetts.

03:09 10 Q. And how long have you lived in the Boston area?

11 A. Okay. I'm here close to six years.

12 Q. And do you have a family here?

13 A. Yes.

14 Q. How are you currently employed?

15 A. Say again?

16 Q. How are you currently employed?

17 A. Now I work in Al-Bara, on 304 Prospect Street, Cambridge,
18 Massachusetts.

19 Q. And is that a sort of Middle Eastern food and halal meat
03:09 20 store in Cambridge?

21 A. Yes. Yes. Yes.

22 Q. How long have you been working there?

23 A. So I work in there -- it's almost five years, but
24 sometimes I left and I came back, so almost five years, yeah.

25 Q. Now, while you were working in that store, did you

1 occasionally see a person who you later learned was named
2 Tamerlan Tsarnaev?

3 (The interpreter translates the question.)

4 A. Yes.

5 Q. Do you recall a particular incident with Tamerlan Tsarnaev
6 in the fall of 2012 where he -- well, do you recall an incident
7 from the fall of 2012?

8 (The interpreter translates the question.)

9 A. Yes, an important event.

03:10 10 Q. And can you describe, please, what was that important
11 event?

12 A. Okay. I'm going to try with English. If not, I'm going
13 to -- okay.

14 So he's a customer of the store, so I see him over
15 there in the store. So probably three or four, five time.
16 Okay? But the time that I can remember 100 percent, so a time
17 when it's Thanksgiving. So we -- and we have a sign in the
18 show, so we put a sign that we sell halal turkey for
19 Thanksgiving. Okay? So when he's come in the store, so he was
03:11 20 try to buy some stuff, and he see the sign, so he ask me, "Why
21 you sell the turkey?" So I told him because this is at
22 Thanksgiving.

23 I'm going to use him. Sorry.

24 Q. That's fine.

25 (The interpreter translates the question.)

1 A. He yelled at me, and he said, "This is haram, which is not
2 right to sell turkeys." And he was so nervous and spoken very
3 loudly using hand gestures too.

4 Q. I'm sorry. Hand gesture?

5 THE INTERPRETER: Hand gestures.

6 (The interpreter translates the question.)

7 A. And he said, "You shouldn't be selling this. That's not
8 right."

9 Q. Can you sort of demonstrate the hand gestures he used and
03:11 10 what his face looked like?

11 (The interpreter translates the question.)

12 A. So he's standing like that, and the show, it's in the
13 front of him, and he use his hand exactly -- he show me, for
14 example, the paper, why you put the sign here, so like that.
15 He's using his hands like that. (Indicating.)

16 Q. And what kind of expression is on his face?

17 A. He's angry.

18 Q. And just so everyone understands, can you explain, what is
19 halal meat?

03:12 20 A. Halal meat? So the halal meat, it's -- for example,
21 the -- it's the Islamic way to slaughter the animal. So we
22 have to use the knife -- okay. For example, there's another
23 way here, for example, you use the gun, and the only
24 one -- it's gun, so you going to skin the animals and serve it
25 to eat.

1 But for our way, for the Islamic way, so you have to
2 use the knife, and you have -- before you slice the animal, you
3 have to say "Allahu Akbar," name of God. That's halal meat.

4 Q. So these were halal turkeys that you were selling?

5 A. Yes.

6 Q. And, nevertheless, Tamerlan Tsarnaev did what you just
7 described?

8 A. Yeah. So it's -- in America, it's -- Islamic society, so
9 even -- they live in America, so they want to celebrate turkey
03:13 10 [sic], so automatically we try to provide halal turkey for
11 them.

12 MR. FICK: Thank you, Mr. Razak. I have nothing
13 further.

14 CROSS-EXAMINATION

15 BY MR. WEINREB:

16 Q. Good morning, Mr. Razak.

17 A. Good morning.

18 Q. In all the time you were working at the store, you only
19 saw Tamerlan Tsarnaev three or four times, correct?

03:13 20 A. Yeah. Or four times.

21 Q. And you only saw him because he was shopping for food at
22 your store?

23 A. Yes.

24 Q. You didn't know him personally?

25 (The interpreter translates the question.)

1 A. No.

2 Q. You didn't even know his name?

3 (The interpreter translates the question.)

4 A. No.

5 Q. So you know virtually nothing about him?

6 (The interpreter translates the question.)

7 A. No.

8 Q. And you never met his brother, Dzhokhar Tsarnaev?

9 (The interpreter translates the question.)

03:14 10 A. Never.

11 Q. So you know absolutely nothing about Dzhokhar Tsarnaev?

12 A. No, I just see him in the news after the bombing. That's
13 it.

14 Q. Okay. So really, all you can tell us is that one day in
15 2012 Tamerlan Tsarnaev told you that Thanksgiving isn't a
16 Muslim holiday and you shouldn't sell turkey?

17 A. Yes.

18 MR. WEINREB: No further questions, your Honor.

19 MR. FICK: Nothing further, your Honor.

03:14 20 THE COURT: All right, Mr. Razak. Thank you. You may
21 step down.

22 (The witness is excused.)

23 MR. WATKINS: The defendant calls Robbie Barnes.

24 ROBERT BARNES, duly sworn

25 THE CLERK: Have a seat. State your name, spell your

1 last name for the record, keep your voice up and speak into the
2 mic so everyone can hear you.

3 THE WITNESS: My name is Robert Barnes, last name
4 B-A-R-N-E-S.

5 DIRECT EXAMINATION

6 BY MR. WATKINS:

7 Q. Mr. Barnes, where were you born?

8 A. I was born in Boston.

9 Q. And where have you lived during your life?

03:15 10 A. Cambridge. Cambridge, Mass.

11 Q. Do you still live in Cambridge?

12 A. I do, yeah.

13 Q. Were you raised in Cambridge?

14 A. Yeah.

15 Q. Go to elementary school in Cambridge?

16 A. I did, yeah.

17 Q. And where did you go?

18 A. I went to King Open elementary.

19 Q. After King Open elementary, where did you go to school?

03:16 20 A. I went to Cambridge Rindge and Latin High School.

21 Q. And did you get your diploma from Cambridge Rindge and
22 Latin?

23 A. I did, yeah.

24 Q. And after that, did you go to college?

25 A. Yeah.

1 Q. Where did you go to college?

2 A. I went to Boston College.

3 Q. And are you still at Boston College?

4 A. No.

5 Q. Did you finish your degree at Boston College?

6 A. Almost.

7 Q. What have you been studying? What is your major at Boston
8 College?

9 A. History.

03:16 10 Q. Are you currently employed?

11 A. Yeah.

12 Q. And how are you employed?

13 A. I'm self-employed.

14 Q. Mr. Barnes, I want to go back to your time at Cambridge
15 Rindge and Latin. How large a school is Cambridge Rindge and
16 Latin?

17 A. It's about 1500 students. At least that's how much it was
18 when I was there.

19 Q. And when did you graduate from Cambridge Rindge and Latin?

03:17 20 A. 2010.

21 Q. Do you see Jahar Tsarnaev in the courtroom today?

22 A. Yes.

23 Q. And he's sitting at counsel table?

24 A. Yeah.

25 Q. Were you in the same grade as Jahar or a different grade?

1 A. A grade above.

2 Q. And did you know Jahar Tsarnaev while you were at
3 Cambridge Rindge and Latin?

4 A. Yeah.

5 Q. And would you describe him as a friend or a close friend,
6 an acquaintance?

7 A. An acquaintance.

8 Q. But you knew him?

9 A. Yeah.

03:17 10 Q. And how did you know him?

11 A. I played soccer with Jahar.

12 Q. And were you on the soccer team all four years?

13 A. Yeah.

14 Q. And at some point were you captain of the soccer team?

15 A. Yeah, I was soccer of the junior varsity team.

16 Q. And was it that year that you met Jahar?

17 A. Yeah.

18 Q. Did you also do other after-school sports, or was soccer
19 it?

03:18 20 A. Yeah, I ran track, winter, and spring, cross-country
21 during my senior year.

22 Q. Did you know Jahar to also do after-school sports?

23 A. Yeah.

24 Q. And what sport was he involved with other than soccer?

25 A. Wrestling.

1 Q. And did you understand whether he was a good wrestler,
2 mediocre wrestler? What -- do you know?

3 A. Yeah, I knew that he was a good wrestler.

4 Q. Now, you said you were acquainted with Jahar. Did you
5 have friends that knew Jahar?

6 A. Yeah.

7 Q. And was there a particular friend?

8 A. Yeah.

9 Q. And that would be Louie Freddura?

03:18 10 A. Yeah.

11 Q. Now, you knew Louie Freddura for some time growing up,
12 right?

13 A. Yeah, I grew up with Louie.

14 Q. And you understood that Louie knew Jahar?

15 A. Yeah.

16 Q. And when you talk about "acquaintance," you moved in the
17 same circle of friends?

18 MR. WEINREB: Your Honor, I'm going to object at this
19 point. These are all leading questions.

03:19 20 THE COURT: They are leading.

21 BY MR. WATKINS:

22 Q. Okay. So you knew Jahar in that fashion?

23 A. Yes.

24 Q. Did you know other friends of Jahar?

25 A. Yeah, I knew.

1 Q. What other friends of Jahar's did you know?

2 A. Steven, Stephen.

3 Q. When you say Steven and Stephen, do you know their last
4 names?

5 A. Yeah, Silva.

6 Q. And are they identical twins?

7 A. Yeah.

8 Q. Did you know -- spend a lot of time with the Freddura
9 family?

03:19 10 A. Yes, I did. I -- they're close family friends, yeah.

11 Q. Did you also at some point meet Tamerlan Tsarnaev?

12 A. Yeah.

13 Q. And how did you meet Tamerlan Tsarnaev?

14 A. I probably met Tamerlan at the Freddura household.

15 Q. Was he friends with one of the Fredduras?

16 A. Yeah, he was friends with Louie's older brother,
17 Sebastian.

18 Q. And so how -- how did it come that you would meet Tamerlan
19 Tsarnaev at the Fredduras'?

03:20 20 A. I spent a lot of time there growing up and during high
21 school. I think -- I know that Tamerlan lived in that
22 neighborhood and spent time there too.

23 Q. Did Tamerlan spend a lot of time?

24 A. Yeah, he was with us fairly often.

25 Q. And how many brothers are there in the Freddura family?

1 A. There are seven of them.

2 Q. And they're relatively close in age?

3 A. Yeah. I mean, they're all spread out.

4 Q. How old was the friend of Tamerlan Tsarnaev -- what was
5 his name?

6 A. Sebastian.

7 Q. And how many years older than you was he?

8 A. He's a couple of years older than I am.

9 Q. At the -- having seen Tamerlan Tsarnaev at the Freddura
03:21 10 household, was that in the context sometimes of parties?

11 A. Yeah.

12 Q. Would you observe Tamerlan Tsarnaev getting high,
13 marijuana?

14 A. I can't recall a specific time, but -- yeah, I would
15 imagine that he did that sometimes.

16 MR. WEINREB: Objection, your Honor. He's
17 speculating.

18 THE COURT: It may stand.

19 MR. WATKINS: I'm sorry?

03:21 20 THE COURT: Overruled.

21 BY MR. WATKINS:

22 Q. Were there particular times or always high?

23 A. I can't say "always high," but, you know, probably often.

24 Q. Now, did you know that Tamerlan Tsarnaev -- well, first,
25 what years did you -- were you over at the Freddura household

1 that Tamerlan would have been there at the same time?

2 A. Probably while I was in high school.

3 Q. Would that have been your junior or senior year?

4 A. Yeah.

5 Q. So you graduated in 2010, so --

6 A. 2010, yeah.

7 Q. So the time period, as best you can put it, what were the
8 years that you saw Tamerlan Tsarnaev through the Fredduras?

9 A. 2008-2011.

03:22 10 Q. Can you describe Tamerlan Tsarnaev physically, his
11 physical stature?

12 A. Yeah, he's a big guy, pretty large in stature.

13 Q. Did you understand him to be a boxer?

14 A. Yeah, I knew that he was a boxer.

15 Q. And what did you know about his boxing prowess?

16 A. I knew that he was a pretty successful boxer.

17 Q. What about his demeanor at the Fredduras'? Was he a shy
18 guy?

19 A. No, he was pretty outgoing, I would say, pretty
03:23 20 personable, joked often. That's the kind of guy he was, I
21 guess.

22 Q. And was he -- was there any arrogance to him?

23 A. I guess so.

24 Q. Were there times where Tamerlan Tsarnaev was a bit of a
25 show-off?

1 MR. WEINREB: Objection, your Honor.

2 THE COURT: Yeah. More direct form of questioning,
3 please.

4 BY MR. WATKINS:

5 Q. Were there times where he exhibited his physical prowess?

6 A. Yeah.

7 Q. Tell us about that.

8 A. I can remember one time in particular when he held, like,
9 a pretty heavy chair out in front of him, probably something
03:23 10 that I wouldn't have been able to do, and he held it out in
11 front of his body, I guess to demonstrate the kind of strength
12 he had.

13 Q. And what was the context of that? Was that during a
14 conversation you had with him?

15 A. Yeah. I mean, we were talking about, like, weightlifting
16 and stuff, and I think he was explaining that he didn't really
17 weight-lift and he did other sorts of exercises.

18 Q. Did you have other conversations with Tamerlan at the
19 Fredduras' or other -- at the Fredduras'?

03:24 20 A. I'm sorry? Say that -- can you say that again?

21 Q. Did you talk with Tamerlan about politics, religion,
22 any --

23 A. No, not really.

24 Q. Now, Jahar Tsarnaev, how does he, his physical stature,
25 compare to Tamerlan?

1 A. Not as big.

2 Q. And what about Jahar Tsarnaev's demeanor when you've been
3 around him and seen him? Is he an outgoing kind of guy?

4 A. Less outgoing, more reserved.

5 Q. But was he an angry guy?

6 A. No.

7 Q. Was he a person who bullied others?

8 A. No.

9 Q. You talked about Tamerlan's physical stature. Was there
03:25 10 times where he might have unintentionally hurt you?

11 MR. WEINREB: Objection, your Honor.

12 THE COURT: No, you may answer that.

13 THE WITNESS: Yeah, there was one time in particular
14 that I remember I ran into him at Angelo's Pizzeria in
15 Cambridge, and he -- he greeted me by sort of giving me some
16 friendly punches to the chest, and I just got taken aback
17 because he hit me, I guess, harder than he -- I don't know if
18 he intended to hit me that hard, but I was taken aback by it.

19 BY MR. WATKINS:

03:25 20 Q. Were you hurt?

21 A. Yeah, it hurt a little bit.

22 Q. Now, when you went off to Boston College, did you live on
23 campus, or did you --

24 A. Yeah, I did.

25 Q. -- just continue to live in Cambridge?

1 During the time you went to Boston College, were you
2 at the Fredduras' quite as much as you --

3 A. Not as much.

4 Q. And at some point did you see Tamerlan Tsarnaev
5 particularly less often?

6 A. Yeah. I mean, I didn't spend as much time in Cambridge
7 while I was at school, so I wouldn't have seen, you know,
8 Cambridge people in general as often.

9 Q. Did you learn that Tamerlan Tsarnaev had gotten married?

03:26 10 A. Yeah, I had heard that.

11 Q. And also did you learn that he had gone to Russia?

12 A. Yeah, I had heard that as well.

13 Q. So while you were in Boston College, would you see
14 Tamerlan Tsarnaev just on the -- other places other than the
15 Fredduras'?

16 A. Yeah, I mean, I probably ran into him a few times just
17 around Cambridge, would run into him.

18 Q. And that would be occasions where you would say "hello"
19 and --

03:26 20 A. Yeah, just, you know, greet each other.

21 Q. I want to turn now to December of 2012. What year were
22 you in school?

23 A. I was a junior in college.

24 Q. And was there a particular time in December 2012 where you
25 saw Tamerlan Tsarnaev?

1 A. Yeah, I saw him in December 2012 at Angelo's.

2 MR. WATKINS: Your Honor, I would like to show the
3 jury a chalk, a picture. I don't think the government -- I
4 don't intend to introduce it, but I don't think the government
5 has any objection. 3223.

6 MR. WEINREB: No objection, your Honor.

7 BY MR. WATKINS:

8 Q. I'm showing you and the jury a picture of Angelo's Pizza.
9 Do you recognize that?

03:28 10 A. Yeah.

11 Q. And where in Cambridge is Angelo's Pizza located?

12 A. It's right across the street from the high school.

13 Q. And Cambridge Rindge and Latin is also close by the
14 library, Cambridge library?

15 A. Oh, yes. They're virtually attached. It's right next
16 door.

17 Q. So you were starting to tell us in December -- sometime in
18 December 2012, you were in Angelo's, and you saw Tamerlan
19 Tsarnaev?

03:28 20 A. Yeah, that's right.

21 Q. So describe that encounter, what happened.

22 A. I was there when he came in, and I was sitting and eating,
23 and he came in and ordered some pizza or something. He -- I
24 greeted him, and he sat down with me, and we had a
25 conversation.

1 Q. And tell us about that conversation. How did it begin?

2 A. You know, just sort of regular, you know, "Hey, what's up?

3 And how are you doing?" I asked, you know, how Jahar was

4 doing. And, you know, he told me a little bit about Jahar.

5 And I asked him about whether he hung out with Sebastian and

6 those -- that group of friends, and he said he hadn't been

7 recently.

8 Q. And did he say why he hadn't been?

9 A. Yeah, he said something along the lines of they need to

03:29 10 drink or smoke to socialize, and "I don't really do that stuff"

11 or "I can't do that stuff anymore."

12 Q. Do you remember whether it was "I don't do that stuff" or

13 "I can't do that stuff"?

14 A. I don't.

15 Q. Describe physically what he was wearing. Was anything

16 notable about that?

17 A. Yeah. He was wearing -- he was wearing some longer

18 garments, I don't know what to call it. I guess a robe. And

19 he was wearing a beard at that point.

03:29 20 Q. Had you ever seen him in a beard before?

21 A. I don't think so.

22 Q. And generally, was his appearance different from when you

23 had seen him at the Fredduras'?

24 A. Yeah.

25 Q. What did you go on to talk about while the two of you were

1 eating pizza at Angelo's?

2 A. He talked a bit about, you know, his religion and -- sort
3 of unprompted by me, I guess, and he definitely got into stuff
4 about, you know, foreign policy stuff, American foreign policy
5 stuff, and he had some criticisms of the things, you know, the
6 United States government does abroad. And, yeah, that was sort
7 of the basis of the conversation.

8 Q. You say unprompted by you. Did Tamerlan just start
9 talking about those things?

03:30 10 A. Yeah. I mean, he was definitely doing most of the
11 talking, and I was sort of doing a lot of listening.

12 Q. And describe his demeanor while he's talking.

13 A. He definitely was very passionate about what he was
14 talking about and -- yeah, he spoke very emphatically.

15 Q. Did you -- was the conversation about Chechnya or Islam or
16 other things?

17 MR. WEINREB: Objection, your Honor.

18 THE COURT: Yes, sustained to the form of the
19 question.

03:31 20 BY MR. WATKINS:

21 Q. If you can talk more specifically about what the
22 conversations were about, what you remember.

23 A. No, I don't remember him talking about Chechnya. I
24 remember him just -- he was certainly relating things that the
25 United States has brought to religion and -- yeah, I don't

1 exactly remember what he was critical of. I just remember him
2 being critical.

3 Q. Did he talk about the concept of respect and --

4 MR. WEINREB: Objection, your Honor.

5 THE COURT: Sustained.

6 BY MR. WATKINS:

7 Q. At some point did another -- a person come in to Angelo's
8 Pizza?

9 A. Yeah.

03:32 10 Q. And tell us -- was that also a person you knew?

11 A. Yeah. His name's Albrecht (ph) or Albritch (ph).

12 Q. And do you know his last name or really any other
13 information?

14 A. I -- based on Facebook, I think his last name is Kerlow
15 (ph) or something. I don't know what his last name is.

16 Q. And how did you know him?

17 A. I knew him from Rindge and Latin. We were in Model UN
18 together. I knew him as a German exchange student or German
19 student studying in Cambridge.

03:32 20 Q. And would you describe him as an acquaintance or a friend?

21 A. Yeah, an acquaintance.

22 Q. So when Albrecht came in, what happened?

23 A. He came in. He greeted me. He didn't greet Tamerlan, and
24 I guess Tamerlan took offense to that.

25 Q. When you say you guess Tamerlan took offense to that,

1 explain.

2 A. He said something along the lines of like what Albrecht
3 did, you know, in greeting me and not greeting him or -- you
4 know, if a person does that, it's disrespectful or not
5 honorable, something along those lines.

6 Q. Now, did you and Tamerlan continue to talk about various
7 subjects?

8 A. Yeah.

9 Q. And was Albrecht also eating?

03:33 10 A. Yeah. Albrecht, you know, he ordered and -- he wasn't
11 eating with us, but he sat down behind us -- behind me.

12 Q. Did Albrecht join the conversation at some point?

13 A. Yeah. Albrecht, I guess, overheard the conversation and
14 stood up and challenged what Tamerlan was saying.

15 Q. Challenged him about what Tamerlan was saying about what?

16 A. He challenged the things that Tamerlan was saying about,
17 you know, the things that America does abroad and I guess the
18 virtue of his religion. He said something along the lines of
19 that women aren't treated with respect in his religion.

03:34 20 Q. Who said that?

21 A. Albrecht said that.

22 Q. Did the conversation become more heated?

23 A. Yeah.

24 Q. And explain -- describe what you saw.

25 A. That it was clear that that upset Tamerlan. He got up and

1 sort of left me where I was sitting, and they started having a
2 conversation, and he got up and sort of in his -- in Albrecht's
3 face, and they were arguing pretty close together.

4 Q. Was there a time where Tamerlan actually physically
5 touched Albrecht?

6 A. Yeah, he was poking him in the chest, and Albrecht
7 appeared to be a little scared, to me. He asked him not to do
8 that. He asked him not to poke him. I remember that.

9 Q. Can you show the jury what you saw of Tamerlan?

03:35 10 A. Just poking him in the chest while he was talking to him.

11 Q. And how does Albrecht's stature compare to Tamerlan?

12 A. He was a small guy, probably shorter than I am and
13 definitely not as big.

14 Q. So they continued to engage in a discussion?

15 A. Yeah.

16 Q. And what happened after that?

17 A. You know, they argued for a bit, and they went outside and
18 continued to argue. I followed them outside and was just sort
19 of spectating. I thought it was kind of bizarre and
03:35 20 interesting. And basically, the argument calmed down a bit,
21 and they went their separate ways.

22 Q. How long outside of Angelo's did they continue to talk?

23 A. I don't know, five or ten minutes.

24 Q. After Albrecht left, did you talk to Tamerlan some more?

25 A. Yeah, I talked to him for a bit.

1 Q. And what was the conversation there?

2 A. Still a lot of the same stuff, you know, foreign
3 policy -- American foreign policy-type stuff. And he -- I kind
4 of let him know that I had my own criticisms of American
5 foreign policy and that I couldn't really agree with everything
6 that he was saying.

7 Q. Other than telling him that you couldn't agree with
8 everything he said at the end there, did you engage in much
9 back-and-forth with him?

03:36 10 A. Yeah. I mean, a little more back-and-forth than earlier
11 on.

12 Q. When you were inside, was it a one-sided conversation
13 between the two of you?

14 A. Yeah, it was more one-sided.

15 Q. All right. Once you spoke for a little while outside of
16 Angelo's Pizza, did the two of you go your separate ways?

17 A. Yeah, we went separate ways.

18 Q. Are you here voluntarily today?

19 A. No.

03:37 20 Q. Did you receive a subpoena from our office?

21 A. I did.

22 Q. If you had not received a subpoena, would you elect not to
23 testify?

24 A. Yeah.

25 MR. WATKINS: That's all I have.

1 CROSS-EXAMINATION

2 BY MR. WEINREB:

3 Q. Good afternoon, Mr. Barnes.

4 A. Good afternoon.

5 Q. My name's Bill Weinreb. I'm one of the prosecutors in the
6 case.

7 So you were friends with Louie Freddura?

8 A. Yeah.

9 Q. And Tamerlan was friends with Sebastian Freddura?

03:37 10 A. Yeah.

11 Q. So Tamerlan was about, what, six years older than you?

12 A. I don't know how old he was.

13 Q. But he was considerably older than you?

14 A. Yeah.

15 Q. You hadn't overlapped with him in school at all?

16 A. No.

17 Q. So it wasn't that -- you weren't really a friend of his,
18 were you?

19 A. No.

03:38 20 Q. In fact, when you were first -- you talked to -- when law
21 enforcement interviewed you earlier, you said that when he saw
22 you in Angelo's that day, you weren't even sure he knew what
23 your name was. Is that right?

24 A. Yeah, that's right.

25 Q. So you really can't tell us a lot about Tamerlan, can you?

1 A. I can tell you what I've told you.

2 Q. Okay. But you didn't know him personally. You weren't
3 intimate with him in any way? You weren't intimate friends?

4 A. We weren't intimate friends, no.

5 Q. You also didn't really know Dzhokhar Tsarnaev very well.
6 Is that correct?

7 A. I knew him.

8 Q. You were acquainted with him. That's what you said?

9 A. Yeah.

03:38 10 Q. But you weren't like a regular friend of his?

11 A. No, we didn't hang out or anything.

12 Q. And you certainly can't tell us anything about Tamerlan
13 Tsarnaev's relationship with Dzhokhar Tsarnaev?

14 A. I don't know what their relationship was like.

15 Q. So in December of 2012, Tamerlan had a slice of pizza with
16 you?

17 A. Yeah.

18 Q. And he had some things to say about United States foreign
19 policy?

03:39 20 A. Yeah.

21 Q. And you said initially he did all the talking and you did
22 a lot of listening?

23 A. Yeah, that's right.

24 Q. But you didn't find what he said particularly compelling,
25 did you?

1 A. No, I didn't.

2 Q. In fact, you told him you didn't agree with him?

3 A. I did, yeah.

4 Q. And he didn't get violent or try to intimidate you, did
5 he?

6 A. No.

7 Q. He seemed to take it well? He wasn't offended?

8 A. No, he wasn't offended.

9 Q. Then this other friend of yours, Albrecht, came in to the
03:39 10 restaurant?

11 A. Yeah.

12 Q. And sat down behind you?

13 A. Yeah. He told me -- I told him that I didn't agree with
14 him after their exchange.

15 Q. Gotcha. Okay. So getting back to Albrecht, he came into
16 the restaurant?

17 A. Yeah.

18 Q. And he sat down behind you?

19 A. Correct.

03:40 20 Q. And he actually criticized the Muslim religion?

21 A. Yeah, he did.

22 Q. And he was a lot younger than Tamerlan, correct?

23 A. Yeah.

24 Q. He was younger even than Dzhokhar Tsarnaev?

25 A. Yeah, I think.

1 Q. He was physically small?

2 A. Yeah. I mean, he's smaller than I am.

3 Q. But he wasn't scared to contradict Tamerlan?

4 MR. WATKINS: Objection.

5 THE COURT: Sustained to the form of the question.

6 BY MR. WEINREB:

7 Q. He contradicted him despite his smaller stature and his
8 younger age?

9 A. Yeah.

03:40 10 Q. When Tamerlan responded, indicating that he didn't like
11 what Albrecht had said, Albrecht just kept arguing with him,
12 correct?

13 A. Yeah.

14 Q. You testified that Dzhokhar Tsarnaev was a lot quieter
15 than Tamerlan Tsarnaev?

16 A. Yeah.

17 Q. So unlike Tamerlan Tsarnaev, Dzhokhar Tsarnaev kept his
18 opinions to himself?

19 A. As far as I know, yeah.

03:41 20 Q. But he was also a fighter, wasn't he?

21 A. Yeah.

22 Q. He wasn't afraid to wrestle opponents much bigger than
23 him, for example?

24 A. Yeah.

25 Q. In fact, he was a leader. He was the captain of the

1 wrestling team?

2 A. Yeah.

3 Q. He wasn't someone that, as far as you know, who was easily
4 pushed around?

5 MR. WATKINS: Objection, your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: No, I knew him to be a pretty good
8 wrestler.

9 MR. WEINREB: No further questions.

03:41 10 MR. WATKINS: Nothing, your Honor.

11 Thank you.

12 THE COURT: Mr. Barnes, thank you. You may step down.

13 (The witness is excused.)

14 MR. FICK: The defense will re-call Gerry Grant.

15 GERALD GRANT, duly sworn

16 THE CLERK: State your name and spell your last name
17 for the record, keep your voice up and speak into the mic so
18 everyone can hear you.

19 THE WITNESS: Sure. It's Gerald R. Grant, Junior,
03:42 20 G-E-R-A-L-D, G-R-A-N-T.

21 DIRECT EXAMINATION

22 BY MR. FICK:

23 Q. Good morning, Mr. Grant. Welcome back.

24 A. Good morning, sir.

25 Q. Can you just briefly remind the jury where you work?

1 A. I work for the Federal Public Defender's Office. I've
2 been there for 21 years, just recently went part-time. And
3 then I also have my own consulting business with computer
4 forensics and mobile forensics.

5 Q. And the defender office you work out of, it's not the
6 Boston office; it's a different one, right?

7 A. Yes, it is the Western District of New York, which is
8 Buffalo and Rochester. And I am stationed in the Rochester,
9 New York, office.

03:43 10 Q. And can you just briefly describe the kind of work you do
11 as it relates to your testimony today, the subject matter of
12 your testimony?

13 A. Yes, sir.

14 Everything I do has to do with some type of digital
15 forensics or digital equipment or electronic evidence.
16 Anything that comes into our office with either a mobile
17 device, a computer, any type of computer-connected device I am
18 in charge of handling that, examining it, providing testimony
19 and/or consultation with the attorneys.

03:44 20 Q. Thank you. And -- okay.

21 Now, were you provided access to electronic materials
22 produced by the Yahoo company in response to a federal search
23 warrant issued by the prosecution?

24 A. I was, yes, sir.

25 Q. And did you review what's commonly referred to as the

1 "return" relating to those materials, the documents that came
2 back in response to the warrant?

3 A. I did, sir, yes.

4 Q. And did the return indicate that Yahoo provided emails for
5 the accounts associated with Tamerlan and Jahar Tsarnaev?

6 A. Yes, sir.

7 Q. And about how many total emails were contained in the
8 materials received from Yahoo?

9 A. Between the two different accounts, the Jahar account
03:44 10 contained 5,561 emails, and the Tamerlan account contained 92.

11 MR. FICK: Your Honor, if I could get the screen up
12 just for the witness, please.

13 Q. Mr. Grant, I'm going to put a chart up on the screen in
14 just a moment, hopefully.

15 Do you recognize the document that's on the screen
16 right now?

17 A. I do, sir.

18 Q. What does this chart -- what does this summary chart
19 depict?

03:45 20 A. The summary chart indicates the emails that were
21 identified to have transposed between Jahar and Tamerlan,
22 between the accounts.

23 Q. Is it all of the emails back and forth between Jahar and
24 Tamerlan?

25 A. There is 21 depicted in this document, but there were two

1 additional emails that were located within the email account.

2 Q. And the two additional ones, was there something about
3 them that led us to -- or led you to leave them off the chart
4 or led them to be left off the chart?

5 A. Yes, we left them off the chart because they contained a
6 link to an Internet address, but that Internet address would
7 have been invalid, so it would not have taken us anywhere.

8 Q. And was -- were the emails addressed to a very, very large
9 number of recipients, not just between the two brothers?

03:46 10 A. Yes, it definitely was. It was not just an individual
11 conversation. There were a number of recipients for the emails
12 indicating even the possibility that this was a spam message.

13 Q. And did you verify the accuracy of all of the information
14 in this summary chart based on the materials received from
15 Yahoo?

16 A. Yes, I individually took each one of these items, opened
17 up and processed the actual snapshot files that came from
18 Yahoo, opened each individual email to validate both date and
19 time, the recipient as well as the sender and the subject.

03:46 20 MR. FICK: And, your Honor, at this time I would ask
21 to admit and publish Exhibit 3316-001.

22 MR. CHAKRAVARTY: No objection.

23 THE COURT: All right. It will be admitted.

24 (Defense Exhibit No. 3316-001 received into evidence.)

25 BY MR. FICK:

1 Q. This is a little bit more blurry than I had hoped, but
2 I'll just blow up a part of it. Can you just briefly go
3 through and describe what the various columns depict?

4 A. Yes. The first column, date and time, is basically pulled
5 from the individual emails that were opened up from the Yahoo
6 snapshot. So that information was copied. That would indicate
7 local time. So it's been converted to the actual Eastern time
8 zone at that point through the email.

9 The "from" column would be whoever the sender was of
03:47 10 the actual email. The "to" column, the third one, would be the
11 recipient or multiple recipients, if there were. And last, the
12 subject was just basically what was in the actual subject field
13 with the other indicators of either a forward or in regard to.

14 Q. And I think you said there were 21 total emails on this
15 chart. Is that right?

16 A. Yes, sir.

17 Q. And the color scheme here is that the Jahar Tsarnaev email
18 address is in blue and the Tamerlan is in green. Is that
19 right?

03:48 20 A. Correct, sir.

21 MR. FICK: If I could get the screen back just for the
22 witness, your Honor.

23 Q. Mr. Grant, I'm going to put up on the screen what has been
24 previously marked as Exhibit 3316-02, which I'll represent to
25 you is a multi-paged document.

1 Have you seen this document before?

2 A. Yes, sir.

3 Q. And what does this summary chart depict?

4 A. In order to be able to show the full email message by
5 indicating both the header information, the subject, to, from,
6 and date, as well as the body of the message, if there was any
7 text or links in them, and attachments, this document was
8 created to make it easier so that an individual can look at a
9 single page and see the actual email in its full content. That
03:49 10 would be very difficult in any other format.

11 Q. Okay. And did you verify the accuracy of all of the
12 information in this chart?

13 A. I did. I went through each one, one by one, again
14 comparing it to the actual email out of the Yahoo snapshot. I
15 opened up the individual attachments, if they were a picture.
16 And I also -- if there was a link that I can go to the
17 Internet, I followed that link through, opened it up and
18 verified that it did take you to a valid video or a file and
19 displayed that file.

03:49 20 Q. In other words, a screen shot from that site was then put
21 into the chart?

22 A. Correct, sir.

23 MR. FICK: And, your Honor, at this time I would move
24 to admit and publish 3316-002.

25 MR. CHAKRAVARTY: No objection.

1 THE COURT: All right.

2 (Defense Exhibit No. 3316-002 received into evidence.)

3 BY MR. FICK:

4 Q. And, Mr. Grant, there's only one email on the first page,
5 but does the chart overall contain all 21 of the messages we
6 saw in the previous exhibit?

7 A. Yes, sir, it does.

8 Q. And in certain places there are translations. What's your
9 understanding of where those translations came from?

03:50 10 A. My understanding is that the translations came from
11 another separate document that was provided from the government
12 to the defender's office.

13 Q. So briefly, then, this first email dated November 1st,
14 2011, who's it to and who's it from?

15 A. It's from Jahar to Tamerlan.

16 Q. And it's essentially forwarding another email message. Is
17 that fair?

18 A. Yeah. As you can -- a couple of ways you can tell if it
19 was forwarded. There's an indicator in the subject line that
03:50 20 has an FW indicating that somebody forwarded the message, as
21 well as you may also see, within the body of the message, if
22 you forward another one, it will actually contain the
23 individual message that was forwarded inside of the body as you
24 forward it on to the next person.

25 Q. In any event, looking at the attachment photos in the

1 right column, fair to say that this is simply forwarding a
2 message containing some pictures of a car, right?

3 A. That is correct. Yes, sir.

4 Q. Moving on to the second page of the exhibit, an email also
5 dated November 1st, 2011, is that a similar kind of message
6 from Jahar to Tamerlan enclosing car pictures?

7 A. Yes, it is. And it did include car pictures, yes, sir.

8 Q. Moving to the third page of the exhibit, an email message
9 dated April 23rd, 2012. Who is this to and who's this from?

03:51 10 A. It's from Tamerlan to Jahar.

11 Q. And does it include an Internet link?

12 A. It did. So because it did contain an Internet link,
13 that's what I was following through on the Internet, and then
14 opened up the actual video that it linked to and then had a
15 screen snapshot to indicate on the right.

16 Q. And can you just read the English-language translation of
17 the text of the message that I just highlighted?

18 A. Based on what you have highlighted, it says, "Watch this,
19 it's interesting."

03:52 20 Q. And is the screen shot there at the right a fair depiction
21 of what is at that link?

22 A. Yes, it is.

23 Q. Moving to the next message dated April 25th, 2012, who is
24 this to -- who is it from and who is it to?

25 A. It is from Tamerlan to Jahar.

1 Q. Was there another recipient as well?

2 A. Yes, there's also a Katherine Tsarnaev that was included
3 in this.

4 Q. And other than the link, is there any message text?

5 A. There was no message text. There was just the link only.
6 And again, I followed that link through to validate that that
7 screen shot was accurate and that it did contain that
8 information.

9 Q. And that's an accurate depiction of the -- what's visible
03:52 10 or what the video is at the other end of that link?

11 A. Yes, sir.

12 Q. Moving to the next page of the exhibit, an email dated
13 April 27th of 2012. Can I ask you to read, if you're just
14 leaving out the sort of Salaam-Alaikum, Islamic greeting --
15 first of all, before I get there, let me -- who's it to and
16 who's it from?

17 A. It is from Jahar to Tamerlan.

18 Q. Okay. And skipping the sort of Salaam-Alaikum greeting,
19 can you read the English part of the message I just highlighted
03:53 20 there?

21 A. Thank you. I appreciate you letting me skip that.

22 It says, "Tamerlan, I miss you. I hope everything's
23 all right. I can't get through to you no matter how many times
24 I try to call. Thanks for the video. Take care of yourself.
25 I'll call today."

1 Q. Okay. And does this appear to be a reply to the message
2 we just looked at, based on the body of the message?

3 A. It does. It's a reply back from the one that Tamerlan
4 sent, sir.

5 Q. Moving to the next page of the exhibit, an email dated
6 April 28th, 2012, who is this from and to?

7 A. It is again from Tamerlan, and it was to Jahar as well as
8 Katherine Tsarnaev.

9 Q. And the body of the message?

03:54 10 A. It contained both a typed text message that said, "Check
11 this out," as well as a link to a YouTube video. Again, I
12 copied that link, pasted it into the Internet, pulled up the
13 actual video, and then this depicts a screen shot of the
14 content of that video.

15 Q. Did you watch any of this video?

16 A. I watched all of -- not all of it, but I skipped through
17 it to make sure that it was completed from the beginning to the
18 end and that I can validate that that exact screen shot is what
19 the video contains on that date and timestamp.

03:54 20 Q. Moving to the next page of the exhibit, an email dated May
21 2nd of 2012, who is this one from and who is this one to?

22 A. It was from Tamerlan to Jahar.

23 Q. I'll just ask you to read, again, the English part of the
24 message without the Islamic greeting at the beginning.

25 A. Okay. Translation is, "I am doing well" -- and I

1 apologize if I'm not well with that -- "I am educating myself
2 more and more about Islam. We are working on spreading Islam.
3 In order for an Islamic society to emerge, Islamic spirit and
4 thinking must rein amongst the population. And here in the
5 Caucasus" -- I think that's what it is; I apologize -- "there
6 are still very many people who live in jahili," [sic] and then
7 in parentheses it says, "in ignorance. But it gets better and
8 better. More and more people turn back to Islam, and want
9 Islamic ruling shariat." And then there's like a text note
03:55 10 that just shows the spelling "sharia." "But ignorance still
11 dominates but not for too long. We need to practice patience
12 and work on our way to Islam. Those who help Allah's cause,
13 Allah will help them."

14 Q. Now, moving to the next page of the exhibit, an email
15 dated May 7th, 2012, who is this to and from?

16 A. It's from Jahar to Tamerlan.

17 Q. In response to the prior message?

18 A. Yes, it was, sir.

19 Q. And can you just read again the English -- the
03:56 20 non-greeting part of the message before the link?

21 A. Okay. It says, "Make Allah S.W.A" -- that's S, period, W,
22 period, A -- "make it easy for the Muslim world, here is an
23 interesting article too." And underneath it was an actual link
24 to an Internet site, again --

25 Q. And the picture, the screen capture at the right is what's

1 at that link?

2 A. Yes, sir.

3 Q. Moving to the next page of the exhibit, an email dated May
4 7th of 2012, who's that to and from?

5 A. It is from Jahar to Tamerlan.

6 Q. And this is the substance of the message that got
7 highlighted on the screen?

8 A. Yes. It contains kind of a website, the .ru, and then it
9 says, "It is. Check it out."

03:57 10 Q. And this website, this F-O-N-D-I-H-L-A-S, is that, in
11 fact, the same website that the previous link we saw just came
12 from?

13 A. Yes, sir.

14 Q. Moving to the next email, an email dated May 28th, 2012,
15 who's that to and from?

16 A. The top one, this is actually two independent emails on
17 one page. So the top one is from Jahar to Tamerlan.

18 Q. And they both -- there's no body text in either email?

19 A. No, sir. It was just attachments.

03:57 20 Q. And the attachments appear to be copies of a woman's
21 passport. Is that fair?

22 A. Yes, sir.

23 Q. Moving to the next page of the exhibit, an email dated
24 June 2nd or -- I'm sorry -- June 5th of 2012. Who is this one
25 to and from?

1 A. This is from Tamerlan to Katherine as well as Jahar, and
2 then there's a third email that's called Karleone, two
3 thousand --

4 Q. The text of the body of the email is what?

5 A. It says, "Two interesting articles, must read."

6 Q. Can you read the first page of the article?

7 A. It says, "One year of" -- I apologize if I can't --
8 "Sheikh Usam-" --

9 Q. Is it Sheikh Usamah?

03:58 10 A. Sheikh Usamah, yes. And that's "Martyrdom and the
11 Apocalyptic Dream of America."

12 Q. And the title of the second article?

13 A. "Sheikh Usamah Bin Laden, The 'Lion of Islam' with a
14 Tender Heart."

15 Q. And, again, this is an email that Tamerlan sent to Jahar,
16 Katherine, and this Karleone address?

17 A. Yes, sir.

18 Q. Moving to the next email dated June 8th, 2012, who is this
19 to and from?

03:59 20 A. This is from Jahar to Tamerlan.

21 Q. And what's his response there?

22 A. His response is, "Thanks, it's interesting."

23 Q. The next email, June 10, 2012, who is that to and from?

24 A. This was from Tamerlan to Jahar as well as Katherine
25 Tsarnaev.

1 Q. And it's another YouTube link that you've captured at the
2 right?

3 A. Yes, it is.

4 Q. Moving to the next email dated June 20th, 2012, who is
5 that to and from?

6 A. Again, this is another one from Tamerlan to Katherine and
7 Jahar.

8 Q. Okay. And here, the screen capture said, "This video is
9 unavailable." Can you explain how something like that happens?

03:59 10 A. A couple of different ways it can be taken down. I tried
11 the link to go to that actual video, and you get this exact
12 screen. It's just an indication that the video was either
13 removed or the person who originally posted it may have deleted
14 it and taken it down, or there may have been some other reason
15 for it not being available, but it's not playable at that
16 point.

17 Q. Are you aware of what -- under what circumstances YouTube
18 may remove videos?

19 MR. CHAKRAVARTY: Objection, your Honor.

04:00 20 THE COURT: Overruled. You may answer it.

21 THE WITNESS: I've seen it where either somebody
22 complains and says it was copyrighted material, they can take
23 it down, or even possibly inappropriate material.

24 BY MR. FICK:

25 Q. Moving to the next email dated June 26th, 2012, can you

1 read the -- I'm sorry. Who is it to and from?

2 A. It's from Tamerlan to Jahar as well as Katherine, and then
3 that third Karleone email.

4 Q. And then can you read the text of the message?

5 A. It says, "Check this out." I'm not sure what the -- you
6 know, "Pious brother, Mashallah."

7 Q. I'm sorry. Is that "pious brother"?

8 A. "Pious brother," yes.

9 Q. And again here the link is missing, but a little bit of
04:01 10 its title remained. Is that fair?

11 A. Yes. In this case, as you can see, it actually gives you
12 an indication of why the video was taken down. So YouTube is
13 explaining that it's been terminated due to third-party
14 notifications, so that would have been somebody saw the video,
15 identified it, wrote in to YouTube and said, "This is copyright
16 material," and then YouTube removed it.

17 Q. And moving on to an email dated August 28th, 2012, do you
18 recognize -- who is this one to and from?

19 A. Again, this is from Tamerlan to Jahar.

04:01 20 Q. And is that a screen capture of part of the video there on
21 the right?

22 A. Yes, it is, sir.

23 MR. FICK: Your Honor, with the Court's permission, I
24 would actually like to publish just a very brief portion of
25 this link live, if I could.

1 MR. CHAKRAVARTY: Your Honor, this link -- they don't
2 have a -- they have a recorded version of this link. I don't
3 know why we need to do a live version.

4 THE COURT: I'm sorry?

5 MR. CHAKRAVARTY: We don't need to go to the Internet
6 to get this when the defense has a downloaded version of this.

7 THE COURT: Yeah, I think we should use --

8 MR. FICK: Well, the downloaded version is part of a
9 different exhibit. I suppose I can find it. One moment.

04:02 10 THE COURT: I think it's a more cautious way of
11 approaching it.

12 MR. FICK: Thank you.

13 (Pause.)

14 THE COURT: Just take it down from the jury while you
15 look for it.

16 MR. FICK: Sure. I'm not -- I'm actually not
17 broadcasting my own desktop onto the screen, but that's fine.

18 THE COURT: I understood you were going to look at
19 another exhibit and find it. I just wanted to take it down
04:02 20 while you did that.

21 MR. FICK: Okay. Thank you. That's fine, your Honor.
22 Thank you.

23 THE COURT: When you're ready, let me know. I'll put
24 it back up.

25 (Pause.)

1 THE COURT: Are you ready?

2 MR. FICK: I am ready. Thank you, your Honor.

3 (Video recording played.)

4 BY MR. FICK:

5 Q. And so just returning now, if I could, to the exhibit that
6 we had up, the page of Exhibit 3316-002, what we just saw is,
7 in fact, the beginning of the video that you had
8 screen-captured here, right?

9 A. That's correct, yes, sir.

04:04 10 Q. So that's the -- again, the content of the link sent from
11 Tamerlan to Jahar on August 28th of 2012?

12 A. Yes, sir.

13 Q. Moving to the next page of the exhibit, an email dated
14 November 8th, 2012, who's that to and from?

15 A. It's from Tamerlan to Jahar.

16 Q. And the text of the message?

17 A. It says, "Take a look, brother."

18 Q. And the title of the article or item that was sent?

19 A. Subhanallah, A Story About the Youngest Sniper of the" --
04:05 20 it's kind of cut off -- "Nusrah Who Fell in a Battle in Hamah
21 at the Age of 15."

22 Q. Moving to the next page of the exhibit, an email dated
23 November 30th of 2012, who is this one to and from?

24 A. This one was from Tamerlan to Jahar.

25 Q. And the text of the message?

1 A. Yes, the top part was the link to the YouTube video, and
2 then below was text that was typed, "Here. Watch it and
3 share."

4 Q. And this screen capture that contains "The Day of
5 Judgment, Love Allah" at the top." Is that a fair and accurate
6 screen capture of the video that is at that link?

7 A. Yes, sir.

8 Q. Moving to the next page of the exhibit, email February
9 16th, 2013, who's this to and from?

04:06 10 A. From Tamerlan to Jahar.

11 Q. And the text of the message?

12 A. Again, the top part is an actual YouTube link, and then it
13 says, "Listen and share. The same version exists in English if
14 you need it."

15 Q. And the screen capture at the right is an accurate
16 depiction of what lies at that link?

17 A. Yes, sir.

18 Q. And finally, the last page of the exhibit, an email dated
19 March 21st, 2013. Who's this one to and from?

04:06 20 A. From Tamerlan to Jahar.

21 Q. And is it the case, again, that the videos that were at
22 those links were no longer available when this exhibit was
23 made?

24 A. Yes. This particular email contained two individual links
25 of which the first one, when we followed through, gave the

1 message that it's no longer available. And this time, though,
2 it stated that the account that posted it has been terminated.

3 Q. Now, Mr. Grant, did you also have occasion to review a
4 search warrant return for Tamerlan Tsarnaev's YouTube account?

5 A. Yes, sir.

6 Q. Can you describe a little bit what is meant by a YouTube
7 account? What is a YouTube an account, an account on YouTube?

8 A. Well, YouTube, like any other type of social media, is a
9 way of sharing and being able to have a wall or some type of
04:07 10 main screen that indicates what you may like, the activities
11 that you're doing, if you're posting a video, so you can
12 actually upload your own videos, you can like other people's
13 videos, you can also join or have what's called a subscription,
14 which -- meaning if you like specific videos that a person or
15 another user of YouTube is producing, you can indicate that you
16 like that, and it will then show you those on your main page or
17 in your news feed, similar to like a Facebook.

18 Q. So is it fair to say it's -- a YouTube account is a way to
19 sort of collect and share material on YouTube with other
04:08 20 people?

21 A. Typically, yes.

22 MR. FICK: Your Honor, if I could get the screen just
23 for the witness again.

24 Q. Mr. Grant, I'm going to show you on the screen what's
25 previously been marked as Exhibit 3315-001. Can you describe

1 for me what this is?

2 A. Yes. This is actually the home screen of the Tamerlan
3 Tsarnaev YouTube account.

4 MR. FICK: Your Honor, I'd ask that this be admitted
5 and published.

6 MR. CHAKRAVARTY: No objection.

7 THE COURT: All right.

8 (Defense Exhibit No. 3315-001 received into evidence.)

9 BY MR. FICK:

04:08 10 Q. So looking at the screen, we have Tamerlan Tsarnaev's name
11 there. Is that fair to say?

12 A. Yes, sir.

13 Q. And then what does it mean to say this is the home page
14 and this "All activities" bar is listed?

15 A. It just is an indication with the red underlining showing
16 you that that is the page that you're on. The YouTube website
17 will basically put the most current page, or the one that
18 you're on, in front of the other pages, kind of like a
19 spreadsheet. And this just indicates that you're on the home,
04:09 20 and the button indicating "All available," means that you're
21 not filtering anything out. You're showing everything that's
22 available on the screen.

23 Q. And highlighting the first entry here, it says Tamerlan
24 Tsarnaev subscribed to a channel, the Merciful Servant. What
25 does it mean to subscribe to a channel on YouTube?

1 A. A channel is kind of like a holding area for somebody to
2 post specific, I guess, videos that they want to file under a
3 specific category. You may be able to associate it with like a
4 hash tag in Twitter. What happens is, if a person goes into
5 this channel, they're going to see the videos that are posted,
6 and then they can subscribe or say they like it, and then other
7 videos that are in that channel will then show up or be offered
8 in their news feed as a possible thing to look at.

9 Q. Paging through now to the second page of this exhibit,
04:10 10 this first entry where it says "Tamerlan Tsarnaev added to
11 Islam and liked," and then there's a video there, what does it
12 mean to add -- add to Islam and liked?

13 A. Well, the "Islam" in this indication indicates a
14 favored -- or a category that was created on the Tamerlan
15 account. If, during that, you're kind of like putting together
16 your collections, if you like a specific video, you can add it
17 to a certain area in kind of like your own favorites.

18 Q. Moving now to the next page of the YouTube home page --
19 pardon me one moment -- and is this another video that was
04:11 20 liked on the Tamerlan Tsarnaev YouTube home page?

21 A. Yes, he indicated that he liked it.

22 Q. And can you read the caption on the upper pullout that
23 I've just done here?

24 A. It says, "So fear them not, but fear me if you are true
25 believers."

1 MR. FICK: Your Honor, if I can get the screen back
2 just for the witness again.

3 Q. Mr. Grant, I'm putting up what's been previously marked as
4 3315-002.

5 A. Sure.

6 Q. Can you describe what this page is?

7 A. Yes. This is basically what's considered the play list of
8 the YouTube account. As I was mentioning, it's kind of like a
9 favorites. It allows you to create a custom play list of
04:12 10 videos. It would be equivalent if you have iTunes and you
11 categorize a specific category of music in your iTunes and then
12 you put that music within it. It's basically a collection.

13 So what would happen is you clicked on the play list;
14 it shows the individual categories that were created for the
15 Tamerlan Tsarnaev account.

16 MR. FICK: Your Honor, I would ask that this be
17 admitted and published as 3315-002.

18 MR. CHAKRAVARTY: No objection.

19 THE COURT: Okay.

04:12 20 (Defense Exhibit No. 3315-002 received into evidence.)

21 BY MR. FICK:

22 Q. Now, Mr. Grant -- I'll wait for this to come up on the
23 screen.

24 What I've just highlighted lists or contains the
25 various play lists that are on this YouTube page, right?

1 A. Yes, sir.

2 Q. And these are categories or play lists created by the
3 user, by the accountholder?

4 A. Yes, sir.

5 Q. And so one of the accounts was actually named -- or one of
6 the play lists was actually called "terrorists"?

7 A. Yes, sir.

8 Q. And what does it mean that there's this gray box without
9 an actual picture visible there?

04:13 10 A. Well, if you open up that actual area, it would indicate
11 that the video is no longer available.

12 Q. For some reason it was taken off YouTube?

13 A. Yes, sir.

14 MR. FICK: And then, your Honor, if I could get the
15 screen for the witness, please, one more time.

16 Q. I'm putting on the screen what's been identified,
17 Mr. Grant, as 3315-003. What is this?

18 A. Again, this is just another page on the YouTube. As we
19 saw before, a person could subscribe to a channel, so when they
04:13 20 do subscribe to a channel, it just keeps a collection of which
21 channels you're subscribed to so that you can quickly access
22 them if needed.

23 MR. FICK: Your Honor, I'd ask that this also be
24 admitted and published.

25 THE COURT: Okay.

1 (Defense Exhibit No. 3315-003 received into evidence.)

2 BY MR. FICK:

3 Q. So, Mr. Grant, are these the four subscribed channels that
4 were on the Tamerlan Tsarnaev page?

5 A. Yes, sir.

6 Q. Now, finally, were you provided with access to the
7 forensic image of a cellular telephone identified -- Tamerlan
8 Tsarnaev's cellular telephone identified by the FBI as HTC, the
9 brand, 1B1?

04:14 10 A. Yes, sir, I was.

11 Q. And did you extract a file or files and also run some
12 reports about the contents of that phone?

13 A. Yes, sir.

14 MR. FICK: I'm going to put up on the screen, just for
15 the witness, if I could, what's previously been marked as
16 3317-1-3.

17 Q. What is this particular document, Mr. Grant?

18 A. What I did is I took the physical extraction of the phone
19 that was provided to us and processed it in a program called
04:15 20 Cellebrite Physical Analyzer. From there, it allowed me to
21 quickly pull out and sort individual categories that come from
22 the phone: contacts, videos, audios, and those types. In this
23 case, what I was able to do is then open up that particular
24 class of entries that were in the phone, list them out, and
25 then extract them to an individual report.

1 Q. And so this particular -- what is this particular report?

2 A. This one specifically is just for the contacts, indicating
3 that there was 166 contacts within this phone.

4 Q. And is the tool that you used to extract this report a
5 true -- a reliable tool used by professionals in your field?

6 A. Yes, it's actually the same tool that was used to provide
7 the extraction.

8 Q. And did you similarly create reports from this phone for
9 the call log?

04:16 10 A. Not the call log.

11 Q. Let me see if I can refresh your recollection. I'm going
12 to put up Exhibit 3317-1-2.

13 MR. FICK: Again, just for the witness.

14 Q. Does that refresh your recollection about extracting the
15 call log?

16 A. Yes, sir.

17 Q. Okay. And did you also extract the -- a list of the audio
18 files on the phone as 3317-1-1?

19 A. Yes, sir.

04:16 20 Q. And did you also extract a list of the video contents of
21 the phone as 3317-1-4?

22 A. Yes, sir.

23 MR. FICK: Your Honor, without -- I don't necessarily
24 want to publish them now, but I'd just ask that all those be
25 admitted into evidence for the moment, if I could.

1 MR. CHAKRAVARTY: No objection.

2 THE COURT: All right.

3 (Defense Exhibit No. 3317-1-1, 3317-1-2, 3317-1-3, and
4 3317-1-4 received into evidence.)

5 THE COURT: We're at one o'clock. Where are you in
6 your exam?

7 MR. FICK: I'm getting very close. In fact, the last
8 issue was one as to which I understand there was an objection
9 at the beginning of the proceedings today that we should
04:17 10 probably address before I go there.

11 THE COURT: Well, why don't we take the lunch recess,
12 and we'll discuss that before we reconvene.

13 THE CLERK: All rise for the Court and jury. The
14 Court will take the lunch recess.

15 (The Court and jury exit the courtroom and there is a
16 recess in the proceedings at 1:00 p.m.)

17 THE CLERK: All rise for the Court.

18 (The Court enters the courtroom at 2:08 p.m.)

19 THE COURT: Let me see counsel at the side.

05:25 20 (Discussion at sidebar and out of the hearing of the
21 jury:)

22 THE COURT: Who called this meeting?

23 MR. FICK: Well, I think I just -- what I mentioned to
24 the Court is I understand the subject of a video on the cell
25 phone -- it's a four-minute-long video of Tamerlan Tsarnaev's

1 voice in the park with his daughter, sort of repeatedly saying
2 "Allahu Akbar" and getting her to repeat it over and over
3 again.

4 We wanted to publish that very short video, and the
5 government, as I understand it, objects.

6 MR. CHAKRAVARTY: It's four-minutes-something long and
7 it just seems so removed from what the issues are. I mean,
8 domination -- it could hardly be characterized as domination --

9 THE COURT: Do you quarrel with the characterization
05:26 10 of what the film shows?

11 MR. CHAKRAVARTY: No, it does say -- but the issue
12 is -- I assume we're not playing the whole four minutes but a
13 30-second clip.

14 MR. FICK: It's only four minutes.

15 THE COURT: Only four minutes.

16 MR. FICK: I mean, in the grand scheme -- I'll play a
17 bit.

18 THE COURT: I'll let you do it and if I think you're
19 overdoing it --

05:26 20 MR. FICK: I'll stop.

21 Thank you, your Honor.

22 MR. WEINREB: I have another matter I would like to
23 put on the record. We had some discussions with the defense
24 over the lunch hour with respect to the foreign witnesses who
25 are here. It has to do with the timing of when they're going

1 to testify.

2 It's currently the intention of the FBI to return the
3 foreign witnesses to Russia on Friday, meaning that they need
4 to testify this week. At that point they will have been in the
5 country for a week.

6 The FBI is devoting 16 personnel full time to taking
7 care of them, both guarding them as well as protecting them
8 from the press and from others. It's an enormous expense and
9 distraction for the agency, and that's just part of the expense
05:27 10 that the government has endured.

11 There is ample time between now and the end of
12 Thursday to get all of them on and off the stand, but the
13 defense keeps insisting that they are not sure they are going
14 to be able to get them on the stand by Thursday and they may
15 need to keep them all the way until the following Monday, which
16 would be an additional four days, simply for the convenience of
17 putting off some other witnesses like those who are reading
18 302s and other kinds of lengthy witnesses.

19 So I just want the record to reflect that it is still
05:27 20 our intention that they are all going back to Russia on Friday
21 whether they have testified or not, and the defense can make
22 their decision about whether they want to call them between now
23 and then or not.

24 MR. FICK: The issue is -- well, first of all, I would
25 say we do intend -- have every intention of calling these

1 witnesses on Thursday. The issue, though, in terms of timing
2 is not just one of sort of convenience, and we would -- we're
3 not sort of recklessly putting on some other witness in advance
4 to delay them, but rather, the conditions under which their
5 presence was permitted and the conditions under which we're
6 able to interact with them makes it extremely difficult to do,
7 the preparation work, and time consuming.

8 So there's a concern about whether we can be ready on
9 Thursday, but we're certainly making efforts to do so.

05:28 10 THE COURT: Okay. Witness-handling is always an issue
11 in cases and it's routinely resolved, and I would expect this
12 will be resolved. So what -- can you tell me what the gross
13 time would be for the witnesses' testimony?

14 MR. FICK: I mean, it's still very much a work in
15 progress. I think we can certainly get them all on and off in
16 under a day.

17 THE COURT: That's too gross.

18 MR. FICK: Well, let me think. There are five of
19 them. It kind of depends on the length of the cross. And I
05:29 20 suspect each witness's direct is probably in the neighborhood
21 of a half-hour.

22 THE COURT: And how many are there?

23 MR. FICK: Five.

24 THE COURT: Okay. Well, let's see how things develop,
25 but I don't think the government's request is an unreasonable

1 one as I heard it.

2 MR. FICK: I understand.

3 (In open court:)

4 THE CLERK: All rise for the jury.

5 (The jury enters the courtroom at 2:13 p.m.)

6 THE CLERK: Be seated.

7 MR. FICK: Thank you, your Honor. If I could get the
8 screen back just for the witness again for a moment, please.

9 BY MR. FICK:

05:30 10 Q. Good afternoon again, Mr. Grant.

11 A. Good afternoon, sir.

12 Q. We just introduced four of your reports about Tamerlan's
13 HTC phone, the 1B1. And there was one more that I neglected to
14 introduce. I'm going to show you another report on the screen
15 and just ask if you recognize what this one is.

16 A. Yes. This is an extraction report of what's considered
17 the Internet history, or the web history of the device.

18 Q. So in other words, as a smartphone it can surf the
19 Internet and it retains certain information about websites that
05:31 20 are visited?

21 A. Yes, sir.

22 Q. And this is also extracted with the tool that you used to
23 create the other reports?

24 A. Yes, the Cellebrite UFED system.

25 MR. FICK: Your Honor, I would ask to admit and

1 publish this as 3317-1-5.

2 MR. CHAKRAVARTY: No objection.

3 THE COURT: Okay. It's admitted and published.

4 (Defense Exhibit No. 3317-1-5 received into evidence.)

5 BY MR. FICK:

6 Q. And so on the screen -- sorry. I'm going to pull out a
7 different section. The sort of last bits of Internet history
8 on the phone are depicted on the screen here?

9 A. Yes, sir.

05:32 10 Q. And it's a number of web pages referencing articles
11 including, among other things, the marathon bombings?

12 A. Yes, sir.

13 Q. And then finally, did you have occasion to extract a video
14 file that was on this phone?

15 A. Yes. It actually was a report that included all video
16 files from the device.

17 Q. Well, there was a report about video files, but then one
18 particular file itself we extracted -- or you extracted, and
19 it's an exhibit marked 3317-1-6. Do you recall that?

05:32 20 A. Yes.

21 Q. So was that a video that was actually taken from the phone
22 itself?

23 A. Yes, sir.

24 MR. FICK: Your Honor, I would ask, then, permission
25 to introduce and publish that exhibit as well.

1 THE COURT: All right. We resolved that in our
2 discussion. That will be admitted.

3 (Defense Exhibit No. 3317-1-6 received into evidence.)

4 (Video recording played.)

5 MR. FICK: Thank you, your Honor. I have nothing
6 further.

7 THE COURT: Mr. Chakravarty?

8 CROSS-EXAMINATION

9 BY MR. CHAKRAVARTY:

05:35 10 Q. Good afternoon again, Mr. Grant.

11 A. Good afternoon.

12 Q. I just have a few things. That phone from which you
13 extracted this video from, that was Tamerlan's phone found on
14 Laurel Street in Watertown?

15 A. I'm not sure what the location is. I was just basing it
16 off of the 1B1 actual folder.

17 Q. Okay. And you were able to extract that phone and all
18 that other data that Mr. Fick showed you from that phone?

19 A. Yes. I was provided a physical extraction, or physical
05:36 20 copy of the device's memory, and it was processed. Yes, sir.

21 Q. That includes the Internet history and that includes the
22 call logs as well as the contacts on the phone?

23 A. Yes, sir.

24 Q. And you weren't able to extract any of that data from the
25 defendant's phones, correct?

1 A. I didn't --

2 MR. FICK: Objection. There's no evidence he was ever
3 asked to do it.

4 THE COURT: Sustained.

5 MR. FICK: Scope.

6 BY MR. CHAKRAVARTY:

7 Q. The number of calls that you had between the -- from the
8 call log of the -- of Tamerlan's phone showed that there were
9 actually hundreds of calls that Tamerlan's phone had?

05:37 10 MR. FICK: Objection to scope.

11 BY MR. CHAKRAVARTY:

12 Q. Is that right?

13 THE COURT: Overruled.

14 THE WITNESS: Yeah, I -- yes, sir. I -- if I could
15 see the exhibit.

16 MR. CHAKRAVARTY: If we could call up 3317-1-2.

17 BY MR. CHAKRAVARTY:

18 Q. Do you recognize this?

19 A. Yes, sir.

05:37 20 Q. And I'm sorry, this isn't in evidence yet.

21 So it shows 851 calls, right?

22 A. Yes, sir.

23 Q. And of those 851 calls, very few of them, in fact, less
24 than 45, were with numbers that were used by the defendant,
25 right?

1 A. I did not go into that type of analysis. All I did was
2 extracted the actual messages, or the call logs themselves, and
3 did not do any detailed analysis on them.

4 Q. So you didn't count how many calls that he actually had
5 with the defendant?

6 A. No, sir.

7 Q. Did you do any analysis to find out who he called?

8 A. No, sir.

9 Q. So did you know that, for example, this phone number, that
05:38 10 was the -- Number 2, that was the phone number that the
11 defendant used on the T-Mobile phone that he activated just
12 before the bombing?

13 MR. FICK: Objection.

14 THE COURT: Overruled.

15 You may answer it.

16 THE WITNESS: I recognized the number from other work
17 I'd done, yes.

18 BY MR. CHAKRAVARTY:

19 Q. In fact, some of it you testified to last time you were
05:38 20 here, right?

21 A. Correct, sir.

22 Q. So you do you know that was the phone number that was the
23 defendant's number that he activated a T-Mobile phone just
24 before the marathon bombing?

25 A. I believe so, yes, sir.

1 Q. And so you didn't do any further analysis about when he
2 called the defendant?

3 A. No, sir.

4 Q. And when the defendant called him?

5 A. No, sir.

6 Q. You would agree with me that it was actually a very small
7 proportion of the 851 calls that were with the defendant?

8 A. I can't agree unless I actually did it. So unfortunately,
9 no, I cannot agree.

05:39 10 Q. With regards to the YouTube videos that you showed, that
11 you described for Tamerlan's YouTube account, you would agree
12 with me that there were some religious videos on that YouTube
13 account, correct?

14 A. I believe they're religious. I know there were a lot of
15 them that were in a different language and others where people
16 were lecturing.

17 Q. And that language was Russian, correct?

18 A. I believe so. Yes, sir.

19 Q. Okay. And you also downloaded some of those videos and
05:39 20 provided them to the government as potential exhibits, correct?

21 A. Yes, sir.

22 Q. And some of those videos were actually dance videos. Is
23 that fair to say?

24 A. I don't recall. I believe so. There may have been a
25 couple of dance ones. I don't recall off the top of my --

1 Q. Do you recall a dance remix video from 2012?

2 A. It sounds familiar. I can't state yes or no on that.

3 Q. The YouTube site that you showed us had also indicated
4 that some of the videos had actually been followed by people --
5 by many people, and there's actually a number on the YouTube
6 site that shows how many people followed it, correct?

7 A. Yes, there is.

8 MR. CHAKRAVARTY: Can we just call up 3315-01?

9 Q. And so, for example, this number here means that there are
05:40 10 320,321 subscribers to that channel, correct?

11 A. Correct.

12 Q. Of which Tamerlan Tsarnaev was but one, correct?

13 A. Correct.

14 Q. And then there were other videos. Like, you know, this
15 video appears to be a humorous video?

16 A. Yes, sir.

17 Q. So there's a variety of different activities on that
18 YouTube site, right?

19 A. Yes. Yes, sir.

05:41 20 Q. And you don't have any evidence that Dzhokhar Tsarnaev was
21 going to this YouTube site, correct?

22 A. Not to -- to this site? No, I don't have any evidence of
23 it.

24 Q. With regards to the emails that you showed us, I think you
25 testified that there were about 6,000 emails that you looked

1 at. Is that right?

2 A. Between the two accounts that were submitted from Yahoo,
3 yes, sir.

4 Q. So between the 6,000 emails, there are about 20 that you
5 presented to the jury?

6 A. Twenty-one.

7 Q. Twenty-one?

8 A. Yes, sir.

9 Q. And those are the emails between the defendant and his
05:41 10 brother?

11 A. Yes, sir.

12 Q. And occasionally there were two other people who were
13 party to those emails?

14 A. Yes, sir.

15 Q. And some of those emails involved the topic of religion,
16 correct?

17 A. They appeared to be, yes, sir.

18 Q. And many of those emails included foreign language, an
19 Arabic phrase as a greeting and then also a message in Russian,
05:42 20 correct?

21 A. Yes, that needed a translation. Yes, sir.

22 Q. And you read the translated versions from the Russian?

23 A. I did, sir. Yes, sir.

24 Q. And those emails -- of those 20 or so emails, 21 emails
25 that you described, some of them actually were the defendant

1 writing back to his brother Tamerlan, correct?

2 A. Yes, they were in response to an email. Yes, sir.

3 Q. And in some of those cases, the defendant actually
4 suggested both an article as well as a particular website to
5 look at, correct?

6 A. I don't believe that they suggested an article. I think
7 it was a response back to one. I'd have to look at it to
8 confirm it.

9 MR. CHAKRAVARTY: Could we go to the Yahoo -- 3316,
05:42 10 please? Thank you. Not this particular one. I'm just going
11 to page down to a particular page. Thank you.

12 Q. So you would agree with me, Mr. Grant, that this is an
13 email from the defendant to his brother?

14 A. Yes, sir.

15 Q. And do you see where it says "Inshallah make Allah s.w.a.
16 make it easy for the ummah," and then there appears to be a
17 hyperlink to an article?

18 A. Yes, sir.

19 Q. And then on the right-hand side you described that you
05:43 20 created a screen shot for that link, to wherever the article
21 went to, correct?

22 A. Yes, sir.

23 Q. And so this appears to be -- I'll zoom in a little more --
24 a page that is in both Arabic as well as in some kind of
25 Cyrillic writing?

1 A. It appears so, yes, sir.

2 Q. And you would agree with me that it appears to be
3 religious in nature, judging by the photograph?

4 MR. FICK: Objection.

5 THE COURT: Overruled.

6 You may answer it.

7 THE WITNESS: It's hard to tell. It looks it. I
8 mean, it's hard to see from here what actually that is.

9 BY MR. CHAKRAVARTY:

05:44 10 Q. Hard to see what's in the photograph, you mean?

11 A. Yeah. It's like a gathering.

12 Q. Okay. It's a gathering around a large box-type structure?

13 A. It appears to be, yes, sir.

14 Q. And then there's Arabic writing and then there are
15 passages throughout. Have you seen the translation of this
16 article?

17 A. No, sir, I've not.

18 Q. Okay. So you only know what was translated that was in
19 the body of the email, correct?

05:44 20 A. Correct, sir.

21 Q. Okay. And so aside from these emails, you don't know what
22 the communications were between the defendant and his brother,
23 correct?

24 A. I'm not sure -- you mean like other forms or you mean --

25 Q. Aside from what you've testified to already, the other

1 forms of communication in which the defendant communicated with
2 his brother --

3 A. No, I only looked at these.

4 MR. CHAKRAVARTY: That's all I have, your Honor.

5 MR. FICK: Nothing further.

6 THE COURT: All right, Mr. Grant. Thank you. You may
7 step down.

8 THE WITNESS: Thank you, sir.

9 (The witness is excused.)

05:45 10 MS. CLARKE: Your Honor, we call Judith Russell.

11 JUDITH RUSSELL, duly sworn

12 THE CLERK: State your name, spell your last name for
13 the record, keep your voice up and speak into the mic.

14 THE WITNESS: Judith Russell, R-U-S-S-E-L-L.

15 DIRECT EXAMINATION

16 BY MS. CLARKE:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. We've got two forms of water up there for you.

05:46 20 A. I like that. Thank you.

21 Q. Let me just help the jury know who you are. You're
22 Katherine Tsarnaev's mother?

23 A. I am.

24 Q. Katherine was married to Tamerlan Tsarnaev?

25 A. That's right.

1 Q. So you were -- he was your son-in-law?

2 A. Correct.

3 Q. So let's tell the jury just a little bit more about your
4 background. Can you tell us the state where you live?

5 A. I live in Rhode Island.

6 Q. And what do you do for a living?

7 A. I'm a nurse. I work in a public charter high school.

8 Q. Registered nurse?

9 A. I'm a registered nurse, yup.

05:46 10 Q. And how long have you been a nurse?

11 A. Many years. Twenty-odd. 25, 28 years.

12 Q. And at some point you were married to a doctor?

13 A. Correct.

14 Q. Are you still married?

15 A. We are.

16 Q. Are you living together?

17 A. No; we're separated.

18 Q. And what kind of a doctor was he?

19 A. Emergency room doctor.

05:47 20 Q. And do you have children other than --

21 A. We have three girls, yup. Three girls are all in -- adult
22 now. And two are in college, in Rhode Island.

23 Q. And where's Katherine in that --

24 A. She's the oldest. The oldest.

25 Q. And the other two are in college?

1 A. Correct. Uh-huh.

2 Q. And you also have -- any grandchildren?

3 A. Yup. One four-and-a-half-year-old granddaughter.

4 Q. And that is?

5 A. Katherine's daughter.

6 Q. Do you -- you call Katherine "Katherine" or do you call
7 her "Katie"?

8 A. I call her "Katie" and "Katherine" depending on the day,
9 or just what comes out.

05:47 10 Q. Or the mood?

11 A. Maybe.

12 Q. So you call her "Katherine" and "Katie"?

13 A. Yes, correct.

14 Q. Can you tell us just a little bit about Katie/Katherine
15 growing up?

16 A. She was the oldest. She was always pretty independent
17 minded, liked sports. She was actually into music. She was in
18 the jazz club in middle school. And she was very much into
19 ballet. That became a passion for her for a number of years.

05:48 20 Seven years, probably.

21 Q. And Katherine at some point graduated from high school and
22 went to college?

23 A. Yup. She went -- graduated high school and decided to go
24 to Suffolk in -- here in Boston.

25 Q. And can you remember about when she went to Suffolk?

1 A. I'm really bad at dates.

2 Q. Yeah.

3 A. Sorry.

4 Q. All right.

5 A. After high school.

6 Q. After high school.

7 What do you know about when Katherine first met
8 Tamerlan Tsarnaev?

9 A. They met, I believe, through a roommate of hers at the
05:48 10 time. I think she was a freshman up at Suffolk. And they went
11 out to a club and she met him there.

12 Q. And did you follow with her -- did you talk to your
13 daughter about the nature of her relationship with Tamerlan?

14 A. Yeah. I mean, she didn't talk a lot about it, but at some
15 point, you know, I found out she had been seeing him. And she
16 told me he was from Russia, and I think she told me he was in
17 school. And then over time I kind of learned that he really
18 had only been at school -- at college -- I still don't really
19 know -- but a very little bit. And so he wasn't in school
05:49 20 really when she was dating him at the -- at all, yeah.

21 Q. So what was the nature of their relationship?

22 A. Well, I think she -- I don't know how serious it got when,
23 and I can't remember dates, but by the time she -- she told me
24 a couple of times she was seeing him, I got the idea that it
25 was -- she really cared for him. So at some point I decided we

1 should meet him. So we invited him down to our house on a
2 weekend for, you know, a family meal.

3 Q. Before you met him, had there been an on-and-off sort of
4 nature to the relationship?

5 A. Again, I'm sorry, I get confused, but there had been
6 on-and-off. But, yeah, before I met him at our house, I don't
7 think I knew that there was any on-and-off. I think that was
8 after I met him.

9 Q. Okay. So you suggested to your daughter that maybe you
05:50 10 wanted to meet this guy that she's dating?

11 A. Uh-huh.

12 Q. Can you tell the jury a little bit about that meeting with
13 Tamerlan?

14 A. Yeah. We invited him down on a weekend. And Katie was
15 living up in Boston, at Suffolk. So I think I might have
16 invited them for two or something on Sunday afternoon. And
17 they got there really late, maybe an hour and a half late. And
18 I had communicated -- tried to communicate some, but I hadn't
19 gotten through. And then they called and -- you know, so it's
05:50 20 the first time I'm meeting him and they came really late and
21 they said something like, "We drove the wrong way on 95." And
22 it seemed kind of -- it bothered me, it irritated me, and it
23 wasn't a good way to start off.

24 Q. Was punctuality a big thing for you?

25 A. Yeah, I've always valued punctuality. And I don't know,

1 it didn't seem like a good way to start off. But it wasn't a
2 big deal. But then it was hard to get to know him, and he
3 didn't really seem interested in getting to know us, so it
4 didn't start off on a really good footing.

5 Q. And then how did the relationship between Katherine and
6 Tamerlan progress?

7 A. I think she got more serious about him but there had
8 been -- they broke up once because I think she found out that
9 he had cheated on her. And we -- the family kind of tried to
05:51 10 advise her not to get back with him and it didn't work.

11 Q. What do you mean the family tried to advise her not to get
12 back with him?

13 A. We weren't real happy with her choice in the relationship.
14 So we thought -- you know, we found out he cheated on her and
15 we thought this is a good opportunity, you know, break it off.
16 Don't stay with him.

17 Q. Was it only because of the cheating that made you not
18 happy with the relationship?

19 A. No, I didn't -- I didn't really want her to be with him.
05:52 20 I didn't think they were a good match. He didn't seem to have
21 any -- the only thing he had passion -- really was driving him
22 was boxing at that point. So he didn't really have a job
23 and -- I don't know. I didn't want her to be with him. The
24 cheating was, you know, a big cause, yes.

25 Q. It was part of it?

1 A. It was part of it.

2 Q. Did there come a time when you got a telephone call from
3 one of her -- Katherine's roommates about --

4 A. There was a time, yeah, when I got a call from one of the
5 roommates' mother saying that they were upset -- the girls were
6 upset, the other roommates, and really concerned because they
7 thought that Katie was in a domestic --

8 MR. WEINREB: Objection, your Honor.

9 THE COURT: Let me see you briefly.

05:53 10 (Discussion at sidebar and out of the hearing of the
11 jury:)

12 THE COURT: First I want to know what you think she'll
13 say.

14 MS. CLARKE: I know what she'll say. She got a
15 telephone call from one of the parents of Katherine's roommates
16 who reported that their daughter had reported that Tamerlan was
17 physically abusive to Katherine.

18 MR. WEINREB: Your Honor, there's hearsay and there's
19 hearsay, and this is multiple layers of hearsay so that it is
05:53 20 presumably the friend of Katherine who may have heard it from
21 Katherine reporting to her own mother who was then reporting to
22 this person. Who knows how much the story changed over time.
23 There's no possible way for the jury to evaluate the
24 truthfulness or the reliability of that given that far removed
25 from the original source is not here to be cross-examined about

1 it.

2 MS. CLARKE: Well, I don't know that it's coming in
3 for the truth of the matter asserted; it's hearsay regarding
4 Tamerlan. But the government knows as well as we know that
5 this is corroborated by an email that one of the roommates sent
6 to a family member about Tamerlan being abusive to Katherine,
7 this incident, and the roommates moved out.

8 So that's been -- I mean, it's not a hearsay sort of
9 pulled out of the air.

05:54 10 MR. WEINREB: And we have moved to exclude that email
11 because it's based on something that the individual in question
12 didn't see or witness, just heard something and surmised that
13 that was going on. We also know that Katherine Tsarnaev
14 herself had firmly denied that.

15 MS. CLARKE: And her mother's going to say that.

16 MR. WEINREB: Yeah. But I think you're talking about
17 something with great potential to confuse or mislead the jury
18 unless the truth of it is known, and nobody who actually has
19 firsthand knowledge about it is going to testify. So the jury
05:55 20 is going to be asked to draw conclusions based on second- or
21 third-hand information about something rather significant, and
22 it's not a proper basis for them to --

23 THE COURT: Okay. Well, as a general matter we're
24 going to be somewhat forgiving of hearsay, but I think multiple
25 layers is a little too far, so I'll exclude it.

1 MS. CLARKE: Your Honor, what I planned on going to
2 next, what she was going to say, was that she got a report from
3 the roommate's mother that Katherine had been abused, so she
4 talked to Katherine about it and Katherine denied it, but it
5 caused her concern as to whether --

6 THE COURT: No.

7 MS. CLARKE: I can't do it?

8 THE COURT: No.

9 (In open court:)

05:56 10 BY MS. CLARKE:

11 Q. Okay. Without going into the content of the phone call or
12 what you did thereafter, did that cause you some more concern
13 about Tamerlan?

14 A. Did the phone call?

15 Q. Yes.

16 A. Yes.

17 Q. And did you do anything to try to dissuade Katherine from
18 the relationship with Tamerlan?

19 A. I did. I had a number of -- I wouldn't call them
05:56 20 conversations because, you know -- but I talked to her a number
21 of times about my concerns, uh-huh.

22 Q. And did it do any good?

23 A. No.

24 Q. Did other members of the family think of doing anything to
25 try to dissuade Katherine from this relationship with Tamerlan?

1 A. Yeah, my sister talked to her, and also I think wrote her
2 a letter with her concerns in it.

3 Q. And --

4 A. It didn't make a difference.

5 Q. After that -- I mean, did you start to notice changes in
6 Katherine?

7 A. Well, she started to learn about Islam, so that was a
8 change because she hadn't been religious as a child, and she
9 started reading and saying she liked the religion.

05:57 10 Q. Did she talk with you about it?

11 A. Not much more -- yes, somewhat. Uh-huh.

12 Q. Was that a fast change, a gradual change? Can you
13 describe it for the jury?

14 A. It was gradual but -- it's hard to answer. It was gradual
15 that she started reading more and -- over a few months she
16 started reading more.

17 Q. And do you know where that came from?

18 A. Well, she hadn't been interested until Tamerlan, but she
19 said that she really liked it for herself and that she liked
05:57 20 what she read, in reading the books.

21 Q. So Islam, the religion -- her interest in the religion
22 came from Tamerlan?

23 A. It came at the same time.

24 MR. WEINREB: Objection to the question.

25 THE COURT: It was a leading question. Why don't you

1 rephrase it.

2 BY MS. CLARKE:

3 Q. Can you tell us a little bit about -- were you aware of
4 whether or not Tamerlan was religious?

5 A. When I first met him I didn't think he was, but over time
6 he became much more religious and talked about it much more
7 frequently. Like anytime I saw him, he would talk about it and
8 try to, you know, show me books and get me to learn about it.

9 Q. So was this a change in him that you saw over time as
05:58 10 well?

11 A. He became more involved in reading and talking about
12 religion, yes.

13 Q. And your daughter did as well?

14 A. Uh-huh.

15 Q. Did Katherine's relationship with Tamerlan change your
16 relationship with her?

17 A. Well, she didn't like that I didn't approve of their
18 relationship, so that became a bit of a problem, yup.

19 Q. And what did that mean? What did that mean? How did that
05:59 20 affect your relationship?

21 A. Well, we couldn't -- you know, we talked less, probably,
22 because she didn't want to hear what I had to say about it.

23 Q. So there were topics you just couldn't touch?

24 A. Uh-huh.

25 Q. Did Katherine finish college?

1 A. No, she did not.

2 Q. And can you tell us why?

3 A. She got pregnant in her junior year at Suffolk with -- and
4 they decided to keep the baby, so...

5 Q. With Tamerlan?

6 A. She got pregnant with Tamerlan's, yeah.

7 Q. So she dropped out of college after, what, the end of her
8 junior year?

9 A. Yeah, the end of her junior year.

05:59 10 Q. And she and Tamerlan got married?

11 A. They did get married before the baby was born, uh-huh.

12 Q. Did you go to the wedding?

13 A. I did not go to the wedding. No one did. I mean, no one
14 from our family.

15 Q. Was that a disappointment?

16 A. Yeah, it was. But -- yes, it was.

17 Q. So would you describe the relationship between you and
18 Katherine and her aunt, your sister, and her as being very
19 close before this time?

06:00 20 A. It was close.

21 Q. And did it get strained over the relationship with
22 Tamerlan?

23 A. We always had contact. We always kept up. I mean, there
24 were things we couldn't talk about, so there was some strain,
25 but we didn't -- it wasn't -- we stayed supportive -- you know,

1 overall supportive.

2 Q. When Katherine finished her junior year pregnant, where
3 did she --

4 A. She moved back home to our family room.

5 Q. In Rhode Island?

6 A. In Rhode Island.

7 Q. Even though she and Tamerlan got married?

8 A. That's correct.

9 Q. And where did Tamerlan stay?

06:00 10 A. He was living in Cambridge with his family.

11 Q. Did you see him?

12 A. Yup. He would come down and visit on the weekends. Not
13 every weekend, but he would come down and visit to see Katie
14 during the pregnancy and after the baby was born. So I did see
15 him, yes.

16 Q. How long did Katherine, or Katie, stay with you?

17 A. Until the baby was about ten months old.

18 Q. And how come after ten months?

19 A. I mean, at that point, you know, ten months, she was doing
06:01 20 all right as a mother. She'd been there, what, ten months, ten
21 months, you know, quite a long time. And it just seemed time
22 to go. And she suggested it. I thought it was time that he
23 supported his -- you know, his wife and daughter. And so she
24 moved up to Cambridge.

25 Q. Did you get to know -- did Katherine talk about Tamerlan's

1 family at all?

2 A. She talked about them.

3 Q. And what did you learn?

4 A. When I first met -- when I first heard about the family,
5 she had said that Tamerlan's father was a lawyer, and then it
6 turned out that she said he bought his law degree but she said
7 that was typical over, you know, where they came from, Dagestan
8 or Chechnya. And then I learned that he was a mechanic in
9 Cambridge, you know, on his own. And then I just learned his
06:02 10 brother was in high school and his mother did home-care.

11 Q. Was Katherine as forthcoming with you about the Tsarnaev
12 family and her relationship with Tamerlan over time or did she
13 sort of begin to shut down with you?

14 A. Yeah, over time she told me it wasn't correct to talk
15 about people's private business or family, their
16 own -- don't-talk-about-people type of thing, so it became a
17 little off-topic, yeah.

18 Q. Did it worry you that that was isolating her?

19 MR. WEINREB: Objection, your Honor.

06:02 20 MS. CLARKE: I'll rephrase.

21 BY MS. CLARKE:

22 Q. Did you have any worries in terms of how private she was
23 becoming?

24 A. Yeah, she was very cut off from a lot of the things she
25 had been involved in earlier in her life with the marriage and

1 relationship.

2 Q. And including her family?

3 A. We stayed in touch. We stayed supportive overall. But it
4 was -- you know, I couldn't talk -- I stopped talking to her
5 about the fact that I -- once the baby came, we stopped talking
6 about my feelings about Tamerlan -- yeah, about him. We just
7 had to rope off some things.

8 Q. So that -- why did you have to rope things off?

9 A. Because I didn't want to break off my relationship with
06:03 10 her and lose my daughter and my granddaughter.

11 Q. Were you aware that -- sometime in 2012 Tamerlan took a
12 trip to Russia?

13 A. I was aware of it.

14 Q. Can you tell the jury what you knew about that?

15 A. I knew that he wasn't working at that point and he decided
16 to go over. I asked why. I asked my daughter, I think, why.
17 And she said he wanted to visit family and friends; he hadn't
18 been over there since he moved to this country. And so I
19 didn't think much of it. She was staying home working and
06:04 20 taking care of the baby, but it was what it was. I couldn't
21 stop it.

22 Q. What was your reaction to him taking a trip to Russia?

23 A. I thought it was pretty selfish because it was a vacation
24 basically.

25 Q. And how long was he to be gone?

1 A. It wasn't clear. I didn't know. But it turned out six
2 months, but I didn't know.

3 Q. When he came back were there more changes that you saw in
4 Katherine?

5 A. No. I mean, I don't recall.

6 Q. Did you see any changes in Tamerlan's level of intensity
7 in religion?

8 A. I think I only saw him one time or so after that. Before
9 he went he had been getting more -- his appearance changed. He
06:05 10 grew a beard and his hair got longer and he wore kind of a cap
11 that he hadn't worn before. So before he -- and then when he
12 got back I think I saw him once outside in the yard and he had
13 long -- probably longer hair, beard and hair than when he left.

14 Q. Now, at some point Katherine herself began to cover?

15 A. To cover, uh-huh.

16 Q. Can you tell the jury about that?

17 A. That was when she -- the day that she started was when she
18 was living in Boston in an apartment in her junior year, and
19 that was the day I went up to see her that she was
06:05 20 covered -- she warned me that she was going to start covering.
21 But then when I first saw it, that was the day that they told
22 me that she was pregnant.

23 Q. So you saw your daughter covering, and that was very
24 different?

25 A. Yup.

1 Q. And learned that she was pregnant all in one day?

2 A. Correct.

3 Q. What was your reaction?

4 A. Well, you know, it was -- I wasn't against her adopting
5 Islam because there's nothing wrong with Islam, but I just was
6 concerned about the whole package of what came with it as far
7 as, you know, he didn't really have a job, there was no -- she
8 was -- it just seemed like she was sacrificing an awful lot to
9 be in the relationship.

06:06 10 Q. I'm going to just -- you described them a little bit. I'm
11 going to pull up a couple of pictures, if I can, and ask you to
12 tell the jury sort of when she began to go out with Tamerlan.

13 MS. CLARKE: Your Honor, for the witness only, I
14 suppose, although I don't think there's any objection.

15 THE COURT: What --

16 MS. CLARKE: 3404.

17 Mr. Weinreb?

18 MR. WEINREB: There's no objection to 3404.

19 MS. CLARKE: So we can just --

06:06 20 THE COURT: You suggested there's more than one. Why
21 don't we find out.

22 MS. CLARKE: There's two. And 3401.

23 MR. WEINREB: No objection to that one either.

24 THE COURT: All right. So both may be admitted, then.

25 (Defense Exhibit Nos. 3404 and 3401 received into

1 evidence.)

2 BY MS. CLARKE:

3 Q. I'm showing you what's Exhibit 3404. You probably can't
4 see a number on there. Do you see it on the screen? Not the
5 number; the picture.

6 A. Yes, the picture.

7 Q. Can you tell the jury about the timing of that? Or tell
8 the jury first who that is.

9 A. That's my daughter Katherine and Tamerlan.

06:07 10 Q. And can you figure out when in her Suffolk years,
11 freshman, sophomore?

12 A. It was probably sophomore because I remember she dyed her
13 hair when she was living in the North End for a summer. So it
14 was probably --

15 Q. So she has blonde hair?

16 A. Yeah, she dyed her hair platinum blond.

17 Q. That wasn't her ordinary hair color?

18 A. Nope. But she wanted to do it, and she looked happy. It
19 made her happy.

06:07 20 Q. And when they first began dating, that's what they looked
21 like together?

22 A. That's what they looked like, yup.

23 Q. Let me show you 3401.

24 And about when is that picture?

25 A. I don't know. I don't know. I mean, she's covered and he

1 has his beard so it must have been fairly late. I'm sure the
2 baby was born. I don't know when it was but that's --

3 Q. Perhaps after he returned from Russia?

4 A. No, it would have been before Russia because when he came
5 back, when I saw him, his beard was more. I don't know for a
6 fact, but I don't think -- I think this was at the beginning
7 when he had started the growth.

8 Q. So this is when you began to see the change in Katherine's
9 appearance and his appearance?

06:09 10 A. She was covering and he started to grow the body hair and
11 he didn't dress as flashy anymore.

12 Q. Did he talk to you more about Islam and religion and
13 politics?

14 A. He tried to talk about that every time I saw him.

15 Q. Can you tell us a little bit about that?

16 A. I mean, he was always -- from the beginning he always
17 wanted to -- well, he always wanted to talk about how Islam was
18 good, and then over time it just seemed to be more of an
19 obsession or -- it just was really important to him and he
06:09 20 wanted to talk about it every time I saw him for the whole time
21 I was seeing him. And I didn't let him, but that's what he
22 tried -- you know, he wanted to.

23 Q. Other topics than Islam? Politics?

24 A. Politics. As far as this country's, you know, politics.
25 About this country's influence and harm to Islamic countries.

1 Q. Was there any difference in the level of intensity before
2 the trip to Russia and after the trip to Russia? Now we're
3 talking about late 2012.

4 A. I would say there was some progression in the time I knew
5 him. But when he got back, I really don't think I saw him more
6 than one time, and that was outside for a few minutes. So in
7 the time I knew him, there was progression of his belief system
8 and obsession or passion, yup.

9 Q. To the point that you couldn't talk to him?

06:10 10 A. Pretty much.

11 Q. Could you derail him from those conversations?

12 A. I mean, I tried with humor and just "I don't want to go
13 there" type of thing, so... Yeah, I mean, I didn't engage
14 after a time with it, yup.

15 Q. Ms. Russell, let me ask you, at some point you heard about
16 the Boston Marathon bombing?

17 A. Yup.

18 Q. Can you tell us where you were when you heard about the
19 Boston Marathon bombing?

06:11 20 A. I think I was at work. I don't -- I mean, I must have
21 been at work, in my car. I heard it on the radio. I don't
22 remember.

23 Q. Patriots' Day is a holiday in Massachusetts but not in
24 Rhode Island?

25 A. Not in Rhode Island.

1 Q. The bombing was on a Monday.

2 A. Uh-huh.

3 Q. And at some point during that week before you learned that
4 Tamerlan was killed, did you have any thoughts about Tamerlan's
5 role in the Boston Marathon bombing?

6 MR. WEINREB: Objection, your Honor.

7 THE COURT: Sustained.

8 BY MS. CLARKE:

9 Q. Well, could you tell us if you considered that Tamerlan
06:12 10 could be a suspect?

11 MR. WEINREB: Objection.

12 THE COURT: Sustained.

13 BY MS. CLARKE:

14 Q. Were you concerned about Tamerlan and the Boston Marathon
15 bombing?

16 MR. WEINREB: Objection.

17 THE COURT: Sustained.

18 BY MS. CLARKE:

19 Q. Were you concerned about your daughter?

06:12 20 MR. WEINREB: Objection unless it's whether she was
21 injured or not.

22 THE COURT: No, you may answer that general question.

23 THE WITNESS: She was at work that day.

24 BY MS. CLARKE:

25 Q. And did you reach out to her to find out --

1 A. I did because she was working in the Boston area. I
2 wasn't sure exactly where. So I texted her and asked her if
3 she was all right, and she said she was but she -- and I told
4 her what happened. I think I told her what happened in the
5 text. And she said, "Yeah, I didn't know what was going on. I
6 heard all these" -- she was maybe in Allston. "I heard all
7 these sirens" and, you know, all this stuff going on. But she
8 was at work and she was okay.

9 Q. And at some point during that week did you learn that
06:12 10 Tamerlan had been killed?

11 A. Yeah, Friday morning early.

12 Q. And can you tell us how you learned about that?

13 A. I woke up hearing my other daughter crying in the hall,
14 and, you know, I wanted to know what was going on, and she
15 said, "Katie thinks her husband" -- "Katie thinks that
16 Tamerlan's dead." And that was early morning Friday.

17 Q. And what did you do?

18 A. I tried to make sense of it. I talked to Becca. I didn't
19 talk to Katie at that point. And then I went and ran and put
06:13 20 the TV on. And at that point I saw pictures and I saw who it
21 was.

22 Q. Had you seen the pictures --

23 A. I saw the pictures on Thursday night.

24 Q. And what did you think when you saw them then?

25 A. I still insist, but I guess I'm wrong, that they didn't --

1 they were grainy -- I didn't think it was him. I'd never met
2 Jahar, and I didn't think it was Tamerlan.

3 Q. At that point?

4 A. At that point.

5 Q. Had you had concerns before that point?

6 MR. WEINREB: Objection.

7 THE COURT: Sustained.

8 BY MS. CLARKE:

9 Q. At the -- Becca, your daughter, receives the telephone
06:13 10 call, and then what did you do?

11 A. We got in the car to go up to Katie and the baby.

12 Q. How come?

13 A. Because if it was him and his brother was -- you know, the
14 whole thing was -- the whole thing was like horrific, and I
15 knew that we needed to get her out of there safe.

16 Q. So you left Rhode Island to --

17 A. Driving up to go. And then it kind of dawned on me that
18 maybe we wouldn't really be able to get there and help her, so
19 we went to my sister's. And then we called the FBI from there
06:14 20 because we weren't -- like I don't know. I was in shock. But
21 we weren't clear if they knew.

22 Q. If they knew who it was?

23 So you called -- you called the FBI yourself?

24 A. Yup.

25 Q. And reported what?

1 A. That we knew who they were, where they lived.

2 Q. And were you told to do anything at that point or did you
3 ask --

4 A. Well, I said, "I want to get Katie out safely, and that's
5 my priority, and, you know, she'll tell the baby, 'You're going
6 to come' and it'll be -- just, like, be safe." And they said
7 they'd come and escort me up there. So they came and they
8 questioned us, of course, at my sister's, the FBI, and then
9 they brought us up to Cambridge.

06:15 10 Q. Did you tell the FBI what you knew?

11 A. Yeah, everything.

12 Q. And --

13 A. Everything I knew, which wasn't much, but I told them,
14 yeah.

15 Q. So what happened after you talked to the FBI?

16 A. They brought us to Cambridge.

17 Q. And were you interviewed by more police?

18 A. They brought us to the Cambridge Police Department, and
19 they talked to us together and separately. I was with my
06:15 20 daughter, and then they interviewed me again, questioned me
21 for -- I don't know -- it felt like a long time -- half-hour,
22 20 minutes. I don't know.

23 Q. You gave them even the name of Katherine's best friend?

24 A. I told them whatever I thought would help.

25 Q. And who was that best friend?

1 A. Gina.

2 Q. Gina?

3 A. Crawford.

4 Q. How did you get reunited with Katherine?

5 A. She was at the Cambridge Police Station with the baby, and
6 they let me take her after that, after we'd been interviewed a
7 couple of times -- I mean twice.

8 Q. Is the -- what's your relationship with Katherine now?

9 A. She really appreciates that we stayed as a family
06:16 10 supportive of her overall, so we have a pretty good
11 relationship. I still see her and the baby. And we do.

12 Q. Is the Katherine that you knew before Tamerlan returning?

13 A. She is healing and -- you know, from this experience.
14 Obviously it hasn't been as hard as all the other victims in
15 Boston, but she's getting her life together and is more kind of
16 lighter in spirit and more like the Katie that we knew.

17 MS. CLARKE: Thank you very much.

18 CROSS-EXAMINATION

19 BY MR. WEINREB:

06:17 20 Q. Good afternoon, Ms. Russell.

21 A. Good afternoon.

22 Q. My name is Bill Weinreb. Would you like a minute or --

23 A. No.

24 Q. No? Okay.

25 So when you heard that Tamerlan was going to come to

1 your house for the first time, you must have been curious as to
2 what he might be like?

3 A. Yeah.

4 Q. But that meeting was somewhat of a disappointment?

5 A. Yes.

6 Q. He was a big talker. Is that true?

7 A. He was a big talker.

8 Q. And full of himself?

9 A. I'd have to say.

06:17 10 Q. He liked to brag a lot about his boxing, about himself?

11 A. Yes.

12 Q. Some people have a very charismatic, magnetic kind of
13 personality, true?

14 A. True.

15 Q. But that was not Tamerlan?

16 A. He had a certain -- no, he had a certain charm.

17 Q. But he didn't pull you in?

18 A. No. No.

19 Q. In fact, you thought that Katherine was making a bad
06:18 20 choice by marrying him?

21 A. I did.

22 Q. You thought she was settling. Well, she could have done
23 better, somebody who had maybe more ambitions or more of a work
24 ethic?

25 A. Yeah. I mean, I didn't think they were a good match,

1 yeah. Right. I have to agree.

2 Q. Okay. So you said that Tamerlan liked to talk about
3 religion?

4 A. He did.

5 Q. He liked to talk about how good Islam is?

6 A. Uh-huh.

7 Q. But not in a very interesting way, from your perspective?

8 A. Well, I don't think it was -- it was not that it was not
9 an interesting way; it was that it was too much.

06:19 10 Q. Well, so, for example, some people talk about things in a
11 way that kind of draws you in, makes you more interested in
12 what they have to say about it, but with Tamerlan -- is that
13 yes?

14 A. Some people are, yes.

15 Q. But not Tamerlan?

16 A. I was not pulled in.

17 Q. The opposite? With all his talk about it, he just pushed
18 you away, correct?

19 A. Yeah, I think -- yeah, I told him I could decide for
06:19 20 myself what I wanted to learn about it.

21 Q. He pushed you to read the Qur'an, for example?

22 A. He encouraged me to. I didn't.

23 Q. You didn't read it, though, right?

24 A. Correct.

25 Q. And he would have liked you to convert, in fact?

1 A. I don't know. I mean, I would guess that.

2 Q. But he certainly wasn't very persuasive about getting you
3 to adopt his religious beliefs?

4 A. I could only answer for me. He was very -- he put a lot
5 of effort into it. He brought different books for me to look
6 at and left them with me and then would follow up. And he did
7 not give up easily on talking about it, but I did not want to
8 go there.

9 Q. And, in fact, you found it annoying?

06:20 10 A. Well, I did.

11 Q. It was boring?

12 A. It was annoying.

13 Q. Okay. You finally told him you had had enough at one
14 point?

15 A. I don't know if there was a cutoff. I just stopped
16 engaging. I don't think I said, "You may never speak to me
17 about this again"; I would tell him I don't want to hear it
18 about the politics because I don't like politics.

19 Q. So if he was trying to get you interested in what he had
06:20 20 to say, he wasn't very successful about it?

21 A. Correct.

22 Q. When Tamerlan and your daughter were at your house, they
23 seemed like a normal couple, did they not?

24 A. Well, I'm not -- what's a normal couple?

25 Q. Well, they chatted?

1 A. They chatted, uh-huh.

2 Q. They watched movies?

3 A. Sometimes. Not much but sometimes.

4 Q. They joked around from time to time?

5 A. Not much, no.

6 Q. They played with their daughter?

7 A. Yeah. Yeah. It's fair to say that.

8 Q. And when you visited Katherine at the apartment that the

9 Tsarnaevs lived at in Cambridge, it was a small apartment,

06:21 10 wasn't it?

11 A. Reasonably -- yeah, small.

12 Q. But a decent one?

13 A. It wasn't bad.

14 Q. It was clean?

15 A. It was a lot different than the media presented it, yeah.

16 It was clean.

17 Q. You actually met the defendant's mother and his sisters at

18 Katherine's baby shower?

19 A. I met her at my house -- the three of them at my house one

06:21 20 time, at Katherine's baby shower, yes.

21 Q. Okay. And at least that one time you met them, they all

22 acted normally?

23 A. Yup.

24 Q. You're aware that the -- Tamerlan's sisters moved out of

25 the house at one point?

1 A. Uh-huh.

2 Q. And Katherine told you it was because the mother, their
3 mother, wanted them to wear the head scarf as well?

4 A. I don't remember who told me, but I did come -- and I
5 don't remember when I heard that, but at some point, yes, I
6 came to understand that some of the reason for them leaving was
7 religious pressure from the mother.

8 Q. Okay. And they didn't want to?

9 A. I didn't know them. I only met them once. I didn't
06:22 10 really know what they wanted.

11 Q. But that was your understanding?

12 A. That seemed to be the inference, you know.

13 Q. So they just struck out on their own?

14 A. I can't comment about what they did. I know they moved
15 out.

16 Q. You know nobody forced them to stay?

17 A. I know they moved out.

18 Q. But your daughter, she liked Islam?

19 A. She seemed to like the religion, yes.

06:22 20 Q. Yeah. You described her as being independent minded?

21 A. Uh-huh.

22 Q. She could even be strong-willed?

23 A. That's independent, yup.

24 Q. But she told you that she was learning about the Muslim
25 religion, and unlike like the defendant and Tamerlan's sisters,

1 she liked the religion?

2 A. She seemed to like the religion.

3 Q. And she learned some more about it, from what you could
4 tell?

5 A. Yes.

6 Q. And eventually she started wearing that head scarf?

7 A. Uh-huh.

8 Q. And, in fact, she still is a practicing Muslim today,
9 correct?

06:23 10 A. Correct.

11 Q. And she still covers, as you say?

12 A. Correct.

13 Q. And once in a while you talk to Katherine about her
14 political views?

15 A. A little bit.

16 Q. And this was both before she met Tamerlan and after she
17 met him?

18 A. I mean, things come up, yeah.

19 Q. And, for example, she was against the war in Iraq?

06:23 20 A. Was she?

21 Q. Yes.

22 A. I don't -- I imagine so. I don't remember a specific
23 conversation about it.

24 Q. Okay. But she didn't seem to have very strong political
25 views. Would that be correct?

1 A. I don't really talk politics with anyone. I don't know.

2 Q. Okay. So she didn't have strong enough views or she'd
3 talk to you about it all the time?

4 A. She did not talk to me about it all the time, no.

5 Q. She didn't talk about religion much?

6 A. No.

7 Q. She didn't really seem to have strong views about it
8 either?

9 A. I think she knew that I didn't really want to talk about
06:24 10 it too much so I don't know -- I can't comment on her views.

11 Q. Well, for example, she encouraged you to read *Islam for*
12 *Dummies* to learn about it?

13 A. I had that book on my shelf for a while. I didn't know
14 where I got it. I don't know if she encouraged me to read it.

15 Q. But she didn't try to convert you or anything?

16 A. No.

17 Q. In fact, she herself stopped going to mosque after her
18 baby was born?

19 A. Uh-huh.

06:24 20 Q. You have to say yes or no.

21 A. Yes.

22 Q. And so for years she didn't go?

23 A. Pardon?

24 Q. And so for years after her baby was born she didn't go?

25 A. Correct. Uh-huh.

1 Q. Your daughter worked very long hours, didn't she?

2 A. She did.

3 Q. And so she didn't have a lot of time to socialize --

4 A. Correct.

5 Q. -- correct?

6 But she still kept in touch with you?

7 A. Uh-huh.

8 Q. And with her dad?

9 A. (Nonverbal response.)

06:25 10 Q. And with her aunt?

11 A. Yes.

12 Q. And with her sisters?

13 A. Texts are a wonderful way to keep in touch.

14 Q. And her friends -- her friend Gina Crawford?

15 A. Correct.

16 Q. And when you say that she's now getting back to the
17 Katherine you once knew, you mean the Katherine who is not
18 bereft by the loss of her husband and everything that happened
19 at the marathon?

06:25 20 A. More than that. More than that.

21 Q. All right. But, in fact, that experience affected her the
22 way it would affect anybody?

23 A. Correct.

24 Q. Correct? And she's recovering from it?

25 A. Yes.

1 MR. WEINREB: No further questions.

2 MS. CLARKE: Just a couple.

3 THE COURT: Go ahead.

4 MS. CLARKE: Thank you.

5 REDIRECT EXAMINATION

6 BY MS. CLARKE:

7 Q. Mr. Weinreb asked you about whether you spent time with
8 Tamerlan's mother and sisters at the baby shower?

9 A. Right. At the baby shower.

06:26 10 Q. So there was a baby shower. I guess we hadn't talked
11 about that. There was a baby shower?

12 A. In August.

13 Q. At your house?

14 A. Uh-huh.

15 Q. And did you spend any time with Zubeidat, Tamerlan's --

16 A. I sat down for a few minutes with her. But beyond that,
17 she sat kind of aside at the kitchen table, and I was busy in
18 the living room, which is open to the kitchen.

19 Q. You were the host?

06:26 20 A. Yeah, I was the host.

21 Q. And did you have any impressions of Zubeidat?

22 A. I did, but it's a little -- I don't know how -- it was
23 years ago and I don't remember, but it just seemed a little
24 funny because she seemed a little bit like she was the queen,
25 and like sitting there the whole time and then people came up

1 and took turns talking to her. And I think people were polite,
2 but I think there was some element like she was the queen at
3 the baby shower, like wanting the attention or getting the
4 attention or removed from everyone somehow.

5 Q. It struck you as unusual?

6 A. A little funny, yeah.

7 Q. And the prosecutor also asked you is the -- when I asked
8 you the question about is Katherine returning to the Katherine
9 that you knew, and you said that it's more than just getting
06:27 10 over what happened with the marathon bombing.

11 A. Yeah, in her relationship with Tamerlan she became more
12 serious, focus -- kind of isolated. So that is part of what I
13 meant.

14 Q. So you see her becoming less isolated --

15 A. Less serious, less -- that's all I can think to say.

16 MS. CLARKE: Thank you. I have no further questions.
17 Thank you very much.

18 THE COURT: Anything else?

19 All right. Thank you, Ms. Russell. You may step
06:28 20 down.

21 THE WITNESS: Thank you.

22 (The witness is excused.)

23 MS. CLARKE: Your Honor, next we would call Gina
24 Crawford.

25 Your Honor, before Ms. Crawford gets on the stand, may

1 we approach?

2 THE COURT: All right.

3 (Discussion at sidebar and out of the hearing of the
4 jury:)

5 MS. CLARKE: Judge, before we get too far away from
6 Ms. Russell, I just want to make a showing as to what I was
7 trying to inquire about. During the week, between the Monday
8 and the Friday, at some point Ms. Russell thought for a moment
9 that it could have been Tamerlan that bombed the Boston
06:29 10 Marathon, and the reason she thought that was because he had
11 become intensely radical in his views of Islam and politics,
12 and she was aware that the FBI had interviewed him at some
13 point.

14 So she had these immediate concerns, and then she
15 pushed them out of her head because she thought how horrible
16 could it be that she could have that thought about him, her own
17 son-in-law. So that was the extent of the testimony that I was
18 trying to elicit --

19 THE COURT: Okay.

06:29 20 MS. CLARKE: -- 16 weeks to Sunday.

21 MR. CHAKRAVARTY: While we're here, I'd like to know
22 whether -- concerning Ms. Crawford, whether there's going to be
23 testimony about domestic violence or whether it will be a
24 variety of statements that are hearsay.

25 MS. CLARKE: I believe she heard about it from -- I

1 think she heard about it from Katherine.

2 MR. CHAKRAVARTY: I'm not sure --

3 MR. WEINREB: Katherine never --

4 MR. CHAKRAVARTY: No, she never admitted it.

5 MR. WEINREB: Katherine insisted there was never any
6 domestic violence, so she didn't hear it from her.

7 MS. CLARKE: It wasn't something I was going to ask
8 her about, but it's a good idea. She knew the roommates and
9 would refer to that, but I don't think I'm going to get into
06:30 10 it.

11 THE COURT: Any issue with exhibits that you might
12 have?

13 MS. CLARKE: I don't think so. There's --

14 THE COURT: The list says there's photographs.

15 MS. CLARKE: There's photographs.

16 MR. CHAKRAVARTY: With regard to some of the texts,
17 the texts were taken by -- written down by an FBI agent during
18 the course of the interview, and the last few --

19 MS. CLARKE: Here's what I've got, Judge. This series
06:31 20 of texts were on the 15th of April, and then the last two texts
21 were on the -- I think when Tamerlan was --

22 MR. CHAKRAVARTY: After he was discovered, but that's
23 not clear from the body of the --

24 MS. CLARKE: But I think she'll do it.

25 MR. CHAKRAVARTY: Oh, she will?

1 MS. CLARKE: Yeah. And that's how I expect to show
2 it.

3 THE COURT: Okay.

4 (In open court:)

5 GINA CRAWFORD, duly sworn

6 THE CLERK: State your name, spell your last name for
7 the record, keep your voice up and speak into the mic.

8 THE WITNESS: Okay. Gina Crawford, G-I-N-A
9 C-R-A-W-F-O-R-D.

06:32 10 DIRECT EXAMINATION

11 BY MS. CLARKE:

12 Q. Good afternoon.

13 A. Hi.

14 Q. I'm over here.

15 Ms. Crawford, can you tell the jury where you live?
16 Not your address but the state.

17 A. I live in Rhode Island.

18 Q. And are you employed?

19 A. Yes.

06:32 20 Q. What do you do?

21 A. I'm a barista at Starbucks. I also waitress and I nanny.

22 Q. So you have three jobs?

23 A. Yes.

24 Q. And how do you work all that together?

25 A. I try -- I fit it in. I'm busy, but it works.

1 Q. All right. Do you know Katherine Tsarnaev?

2 A. Yes.

3 Q. And how do you know her?

4 A. We met in elementary school and have been friends since.

5 Q. Very close friends?

6 A. Yes.

7 Q. And do you --

8 A. Best friends.

9 Q. And do you call Katherine -- what name do you call her?

06:33 10 A. I call her "Katie."

11 Q. "Katie." Have you always called her "Katie"?

12 A. Yes.

13 Q. Would you describe your relationship as best friends?

14 A. Yes.

15 Q. For a long time.

16 A. For a long time.

17 Q. Did you know Tamerlan Tsarnaev?

18 A. I met him once.

19 Q. Only once?

06:33 20 A. Yes.

21 Q. In the time that Katherine knew him?

22 A. Yup.

23 Q. Do you know Jahar Tsarnaev?

24 A. I don't.

25 Q. Okay. So you said you went to elementary school together?

1 A. Yes.

2 Q. Can you just tell us a little bit about that. What
3 schools where?

4 A. We went to Quidnessett Elementary School and then
5 Davisville Middle School and North Kingstown High School.

6 Q. And did both of your families live in North Kingstown?

7 A. Yes, we lived a street over. A street next to each other.

8 Q. So were your families close?

9 A. Yes, still are.

06:34 10 Q. And your mom and Katie's mom are good friends?

11 A. Really good friends.

12 Q. Do you remember when you graduated from high school?

13 A. 2007.

14 Q. Can you describe the Katie that you knew in high school
15 days?

16 A. In high school? She was always really fun to hang around
17 with. We would go shopping, watch movies. She was really
18 artsy. Just social.

19 Q. Did you -- was she religious?

06:34 20 A. No, not at all.

21 Q. Did you and Katie go to college together?

22 A. No.

23 Q. Where did she go and where did you go?

24 A. She went to Suffolk in Boston, and I went to University of
25 Rhode Island.

1 Q. Did you remain in contact when you went to different
2 colleges?

3 A. Yes.

4 Q. How was that?

5 A. Let's see. We'd see each other every few months or so,
6 talk on the phone all the time.

7 Q. So you kept in contact?

8 A. Kept in contact, yes.

9 Q. I'm going to -- did you come up to Boston to visit Katie?

06:35 10 A. Yes.

11 Q. I'm going to show you a couple of pictures just so you can
12 tell us --

13 MS. CLARKE: And I believe there's no objection to
14 these, your Honor. 3437A and 3437B.

15 If I could move their admission.

16 THE COURT: Okay. I understand there's no objection.

17 MR. CHAKRAVARTY: No objection.

18 THE COURT: All right. They'll be admitted.

19 (Defense Exhibit Nos. 3437A and 3437B received into
06:35 20 evidence.)

21 BY MS. CLARKE:

22 Q. All right. I'm going to show you, I think, 3437A. Can
23 you see that okay? Can you describe who's in that picture?

24 A. That is myself and Katie.

25 Q. You can touch the screen and it will -- you can draw a

1 circle around it with your finger.

2 Can you tell us which one's you and which one's Katie?

3 A. Me and Katie (indicating).

4 Q. All right. And do you remember the occasion?

5 A. Yes.

6 Q. Can you tell us about it?

7 A. That was -- we were getting ready to go -- I had met her
8 in Boston, and we were getting ready to go out for a night.

9 Q. Freshman year, sophomore year, do you remember?

06:36 10 A. That was freshman year.

11 Q. And let me pull up, while we're at it, 3437B. Is that
12 another picture of you and Katie?

13 A. Yes.

14 Q. Is that that same night?

15 A. Yes, it was.

16 Q. So that was a weekend that you came up to -- or down to or
17 over to Boston?

18 A. Yup.

19 Q. Okay. All right.

06:37 20 When did you first hear the name "Tamerlan Tsarnaev"
21 from Katie?

22 A. It must have been freshman year, like the middle of
23 freshman -- yeah, winter.

24 Q. And in what context did you hear it in?

25 A. She just told me she had met someone at a club, and I

1 didn't -- I don't know. I didn't take it to be anything
2 serious yet but that was...

3 Q. Did it become serious?

4 A. They were having fun.

5 Q. Did it become serious?

6 A. Yes.

7 Q. And how did you find out about that?

8 A. Let's see. I knew it was pretty serious when she got
9 pregnant.

06:37 10 Q. Well, that was pretty serious.

11 (Laughter.)

12 A. Yes.

13 Q. Did she talk to you about him before she got pregnant?

14 A. Yeah.

15 Q. So, I mean, they dated a couple of years before she got
16 pregnant?

17 A. Yes.

18 Q. Was it an on-again/off-again relationship or a fairly
19 constant relationship?

06:38 20 A. Yeah, it was on-again/off-again.

21 Q. And can you describe that just a little bit?

22 A. He cheated on her a few times and she found out.

23 Q. Broke up?

24 A. Broke up with him, yeah. I think they broke up for six
25 months or so.

1 Q. What did she say about him?

2 A. She said he was a really fun person. I didn't really --

3 Q. Did she introduce you to him before she got pregnant?

4 A. No.

5 Q. All right. At some point did that strike you as unusual?

6 A. Yes.

7 Q. And did you keep saying you wanted to meet him or no?

8 A. Yes. I tried many times.

9 Q. And what did Katie say?

06:38 10 A. Well, she had tried too. Just one time when I was in --
11 when I was visiting in Boston, and she had called him and he's
12 like, "Oh, but you're with your friend so that's your time."
13 So I took it to be as they kept their lives separate.

14 Q. And he didn't want to meet you?

15 A. And he didn't want to meet me.

16 Q. At some point did you see Katie develop an interest in
17 Islam?

18 A. Yes.

19 Q. And can you tell us a little bit about that?

06:39 20 A. That was -- I knew she was really becoming serious about
21 it when she became pregnant and started covering, but she had
22 been reading the Qur'an and --

23 Q. Did she tell you why?

24 A. Why she had --

25 Q. Gotten interested in Islam?

1 A. Because Tamerlan was Muslim.

2 Q. And had he wanted her to develop that interest? Did you
3 know anything about that?

4 A. I took it as that she definitely was interested as well,
5 but he -- I thought he put that idea in her head, I guess.

6 Q. Did Katie finish her school at Suffolk?

7 A. She finished her junior year and then dropped out.

8 Q. And do you know why?

9 A. Because she was pregnant.

06:40 10 Q. And did she and Tamerlan get married?

11 A. Yes.

12 Q. Were you invited to the wedding?

13 A. No.

14 Q. Was that a disappointment to you?

15 A. Yes, but it wasn't a big wedding, it was just them, so I
16 just thought it was how the culture was.

17 Q. Had you expected to be at your best friend's wedding one
18 day?

19 A. Yes.

06:40 20 Q. Where did Katie live after she got pregnant?

21 A. She was in Boston, the North End, I think.

22 Q. Until she finished her junior year?

23 A. Yes.

24 Q. And then where did she move?

25 A. After she had Zahira she moved home, back to Rhode Island.

1 Q. So she was living in Rhode Island when she had Zahira?

2 A. Yes.

3 Q. At some point did you meet Tamerlan's mother?

4 A. Yes.

5 Q. And can you tell us a little bit about that?

6 A. We were taking care of Ziaudy, Ailina's son, and she had
7 come to drop him off and pick him up.

8 Q. And so you met her?

9 A. Yes.

06:41 10 Q. And her name? Zubeidat?

11 A. Yes.

12 Q. Did you go to a baby shower for Katie in Rhode Island?

13 A. Yes, I did.

14 Q. At Katie's mom's house?

15 A. Yes.

16 Q. And was Zubeidat at that baby shower?

17 A. She was.

18 Q. Can you tell us a little bit about her there?

19 A. She was very intense, very -- came off as kind of
06:42 20 intimidating.

21 Q. What do you mean when you say "intimidating"?

22 A. She spoke a lot about her religion and --

23 Q. At the baby shower?

24 A. Yes. And how she thought it should be.

25 Q. And you described her as "intense"?

1 A. Uh-huh.

2 Q. Can you tell us a little bit more about that?

3 A. I remember a few people got into -- not -- it wasn't an
4 argument, really, but it was a heated discussion about Islam,
5 and she was just very set in her opinions.

6 Q. Was that uncomfortable?

7 A. A little.

8 Q. Did you actually talk to her about Islam or avoid the
9 discussion?

06:42 10 A. I kind of avoided it with her.

11 Q. Do you remember when Zahira was born?

12 A. Yes.

13 Q. Were you there?

14 A. No.

15 Q. Did you come visit in the hospital?

16 A. Not in the hospital.

17 Q. When did you first, then, see Katie and Zahira?

18 A. A couple of days after she'd come home.

19 Q. And did you meet Tamerlan then?

06:43 20 A. No.

21 Q. When did you meet Tamerlan?

22 A. He -- I was at work at Starbucks and he came in to get
23 coffees for himself and Katie.

24 Q. And how did you know it was Tamerlan?

25 A. I'd seen pictures and he just looked -- I mean, I knew it

1 was him.

2 Q. And did he introduce himself?

3 A. Not -- no, I think I was the first one to say, "Oh, you're
4 Tamerlan."

5 Q. So is that it?

6 A. Yeah. I said, "It was nice to finally meet you, and hope
7 to see more," but that was pretty much it.

8 Q. And did you ever see more of him?

9 A. No.

06:44 10 Q. Katie at some point moved back to Cambridge with Zahira?

11 A. Uh-huh.

12 Q. Do you remember when that happened? Not year-wise, but do
13 you remember when she moved back to Cambridge?

14 A. Yeah, it was about -- I think like ten months after Zahira
15 was born.

16 Q. And did you ever come and visit Katie in Cambridge after
17 Zahira was born?

18 A. Yes, once.

19 Q. Can you tell us about that?

06:44 20 A. I came, and no one else at the house was there, and we
21 just walked around Boston and I got to see where she lived.

22 Q. How often did you visit her in Cambridge after she came
23 back with Zahira?

24 A. It was just that once.

25 Q. And you didn't see Tamerlan on that visit either?

1 A. No.

2 Q. Did you visit Katie at all after that first time in
3 Cambridge? I mean, did you see her in Boston or in Cambridge?

4 A. Not in Boston.

5 Q. Where, then?

6 A. She had come home a few times back to Rhode Island.

7 Q. Bringing the baby with her?

8 A. Yes.

9 Q. And did Tamerlan come?

06:45 10 A. Yes.

11 Q. Did you get to see him there?

12 A. No.

13 Q. Did you try to spend time with them as a couple?

14 A. I tried, yeah. And Katie knew that I would like to, but
15 it never happened.

16 Q. At some point did you learn about a trip that Tamerlan
17 took to Russia?

18 A. Yes.

19 Q. And do you remember when that was? 2012?

06:45 20 A. Around then, yes.

21 Q. What was your understanding from Katie as to why Tamerlan
22 went to Russia?

23 A. I wasn't sure exactly, but I thought that he had gone to
24 be with his dad, do something over there. I didn't know what
25 exactly.

1 Q. While he was gone did you get to spend more time with
2 Katie?

3 A. Yes.

4 Q. And when he came back, did you notice any change in Katie?

5 A. Yes.

6 Q. Can you tell us about that?

7 A. She became more intense into Islam, would speak about it
8 all the time. Like all the conversations we had would always
9 lead there. She would try and get me to read about it and gave
06:46 10 me a few books on, like, an introduction to Islam. And I
11 watched a few lectures on YouTube.

12 Q. Because she asked you to?

13 A. Uh-huh.

14 Q. And what was your reaction to all of that?

15 A. I just -- I mean, it's a lot to think about. I thought it
16 was interesting to learn about it.

17 Q. Did you want to be converted?

18 A. No.

19 Q. And did you tell Katie to stop talking to you about it?

06:47 20 A. I never really told her to stop. It was just -- I mean,
21 that was her life, so...

22 Q. But there was a growing intensity, it sounds like?

23 A. Yes.

24 Q. Was that concerning to you?

25 A. A little bit.

1 Q. How come?

2 A. Just because it became most of what we talked about, and I
3 thought there was more to life than that.

4 Q. At some point you heard about the bombing of the Boston
5 Marathon, right?

6 A. Uh-huh.

7 Q. And did you have contact with Katie that day?

8 A. Yes, I texted her.

9 MS. CLARKE: Let me pull up -- and I don't think
06:47 10 there's an objection to 3436A. Is that correct?

11 MR. CHAKRAVARTY: That's correct. No objection.

12 THE COURT: Okay.

13 (Defense Exhibit No. 3436A received into evidence.)

14 BY MS. CLARKE:

15 Q. I'm going to show you a document, and I think we reviewed
16 this together. And can you tell the jury what there is? This
17 is a summary of something?

18 A. Yes, this is what we said the day that it happened. And I
19 was just asking if everybody was okay.

06:48 20 Q. These are texts between you and Katie on the 15th of April
21 2013?

22 A. Yes, the day it happened.

23 Q. And can I get you to read them for the jury? Can you see
24 them okay? Can you see them okay?

25 A. Yes.

1 Q. Can I get you to read them and tell who's saying what?

2 A. I said, "Hey. You okay?" And she says, "Yes, I'm fine.
3 I'm at work with Zahira. Thanks." And then she says, "I'm
4 like eight miles from Boston for work. Yeah, it's crazy."

5 And then I say, "I can't believe it." I say,
6 "Everyone you know okay? People are idiots. I'd say harsh
7 words but not to you."

8 And she says, "Yeah, as far as I know. Tamerlan was
9 home in Cambridge." And then I say, "Okay. Good."

06:49 10 And then Katie says, "Hmm, well, that's a long story."

11 And I say, "Ha ha. Touché, touché." Then Katie says,
12 "Although a lot more people are killed every day in Syria and
13 other places. Innocent people."

14 And I say, "Yeah, our world is messed up. People
15 are."

16 Q. When you got this text back from Katie, what did you
17 think?

18 A. I thought that it was strange that she was bringing that
19 up in this situation, but she was always very into politics, so
06:50 20 I knew -- I mean, she kept up with the world, what was going on
21 in the world, so...

22 Q. And had she had conversations with you as part of this
23 growing intensity about these kinds of topics?

24 A. Not so much about Syria.

25 Q. But international politics?

1 A. But international politics, yes.

2 Q. You had another couple of texts with Katie once you found
3 out about Tamerlan being killed?

4 A. Uh-huh.

5 Q. I'm going to show you 3436B. And that was on the Friday,
6 the 19th of April?

7 A. Yes.

8 Q. And these are texts you actually provided to the FBI. Is
9 that correct?

06:51 10 A. Yes.

11 Q. The texts we've already read as well as this?

12 A. Yes.

13 Q. Can you read for the jury what you said to Katie by text?

14 A. I said, "I'm here for you if you need me, Katie. I love
15 you." And I said, "We don't have to say anything. I just want
16 to hug you."

17 Q. Did you have any response from Katie to those texts?

18 A. No.

19 Q. What did you think when you found out Tamerlan was
06:51 20 involved?

21 MR. CHAKRAVARTY: Objection, your Honor.

22 THE COURT: Sustained.

23 BY MS. CLARKE:

24 Q. What did you think when you found out that Katie's husband
25 and her husband's brother were the bombers of the Boston

1 Marathon?

2 MR. CHAKRAVARTY: Objection, your Honor.

3 THE COURT: Sustained.

4 BY MS. CLARKE:

5 Q. Have you seen Katie since that -- these texts?

6 A. Yes.

7 Q. And have you spent time with her?

8 A. Yes.

9 Q. And is the Katie that you knew before --

06:52 10 MR. CHAKRAVARTY: Objection to the leading nature,
11 your Honor.

12 THE COURT: I haven't heard the question yet.

13 MS. CLARKE: Maybe we should write one together.

14 BY MS. CLARKE:

15 Q. Have you seen changes in Katie in the last few months?

16 A. Yes.

17 Q. And can you tell us what those are?

18 MR. CHAKRAVARTY: Objection to relevance, to changes
19 in the last few months, your Honor.

06:52 20 THE COURT: Overruled.

21 You may answer it. Go ahead.

22 THE WITNESS: I notice she's -- I mean, it's kind of
23 back to how it was before everything got so intense with her,
24 with the religion.

25 BY MS. CLARKE:

1 Q. Is she still covering?

2 A. Yes.

3 Q. But you see a return to the Katie of pre-intense Islam?

4 A. Yes.

5 Q. And can you describe what you mean by that?

6 A. We don't -- she doesn't try and force me to learn about
7 it, we don't talk about it nearly as much, and it's just we
8 have our own lives that we talk about.

9 Q. You were interviewed by the FBI?

06:53 10 A. Yes.

11 Q. How many times?

12 A. Twice.

13 Q. And did you answer their questions?

14 A. Yes.

15 Q. And you also testified before the grand jury?

16 A. Yes.

17 Q. Subpoenaed by the prosecution?

18 A. Yes.

19 MS. CLARKE: Thank you very much.

06:53 20 THE WITNESS: Thank you.

21 MR. CHAKRAVARTY: No questions, your Honor.

22 THE COURT: No questions? All right. Thank you,
23 Ms. Crawford. You may step down.

24 (The witness is excused.)

25 MR. WATKINS: Your Honor, the defendant would call

1 John Curran.

2 (Counsel confer off the record.)

3 MS. CONRAD: The defense calls Robert Ponte,
4 P-O-N-T-E.

5 (The unidentified witness is sworn.)

6 MS. CONRAD: Sorry, your Honor. That isn't Mr. Ponte;
7 that's Mr. Curran, so...

8 MS. CLARKE: Maybe I can help in the hallway.

9 MS. CONRAD: I was wondering why I didn't recognize
06:55 10 him.

11 (Pause.)

12 THE COURT: It's been a long day.

13 (Laughter.)

14 MS. CONRAD: We have to work on our hand signals
15 better.

16 (Pause.)

17 MS. CONRAD: That's better. The defense now calls
18 Robert Ponte.

19 ROBERT PONTE, duly sworn

06:56 20 THE CLERK: State your name, spell your last name for
21 the record, keep your voice up and speak into the mic.

22 THE WITNESS: Robert Ponte, P-O-N-T-E.

23 DIRECT EXAMINATION

24 BY MS. CONRAD:

25 Q. Good afternoon, Mr. Ponte. I'm over here.

1 A. Oh. Good afternoon.

2 (Laughter.)

3 Q. Can you tell us, sir, what you do for a living?

4 A. Currently I'm a piano teacher, jazz pianist. For 36 years

5 I had been the music teacher, jazz and band, at the Cambridge

6 Rindge and Latin School.

7 Q. And that's a public school?

8 A. It is.

9 Q. And did you, in that job, meet Tamerlan Tsarnaev?

06:57 10 A. I did.

11 Q. And how did you meet him?

12 A. He came to me in September -- I can't quite recall the

13 year at the moment.

14 Q. Let me see if I could help you out.

15 A. Thank you.

16 MS. CONRAD: If I could just have the -- I think -- do
17 you have it up? 3534A, please, just for the witness.

18 Never mind. I'll use a piece of paper. Maybe not.

19 I'll use this. Oh, it's up. Okay.

06:57 20 Q. Can you take a look at your screen, please, Mr. Ponte,
21 and -- let me see if I can make this a little bigger. Does
22 that help refresh your recollection?

23 A. Oh, yes.

24 Q. And what school year was it?

25 A. September 2004-2005.

1 MS. CONRAD: Your Honor, I would offer 3543A.

2 MS. PELLEGRINI: No objection.

3 (Defense Exhibit No. 3543A received into evidence.)

4 MS. CONRAD: May that be published to the jury,
5 please?

6 BY MS. CONRAD:

7 Q. And do you see your name on here as one of his teachers?

8 A. I do.

9 Q. And if you can just point to that. If you touch the
06:58 10 screen, it will make a mark and you can circle your name.

11 A. Did I do that correctly?

12 Q. No, but let me try it and see if -- is that it right
13 there?

14 A. Yes.

15 Q. And what was the class that you taught him?

16 A. Jazz ensemble, beginning.

17 Q. And what year was that?

18 A. That would have been September of 2004.

19 Q. And drawing your attention to a different part of this
06:59 20 document, can you tell us what grade Tamerlan was in at that
21 time?

22 A. Grade 11.

23 Q. And do you know how old he was then?

24 A. He seemed a little older than most of the students there,
25 but I don't recall exactly.

1 MS. CONRAD: If I could just have the document camera
2 for a moment just for the witness.

3 Q. If I could just direct your attention to this record, does
4 that refresh your recollection as to his age in 2004?

5 A. Okay. There it is. So 1988.

6 Q. Right. So he would have been in 2004 -- I'm sorry. It's
7 '86, I think. Let me zoom in a little more. It's a little
8 hard to see. Well, I guess -- does that help you at all?

9 A. No. Actually, on my screen it was just reduced, the size
07:00 10 of the document.

11 Q. That was probably my fault. How about now?

12 A. Yes, that's a six.

13 Q. So in 2004 he would have been -- at the beginning of the
14 school year in September he would have been 17 going on 18,
15 right?

16 A. Correct.

17 Q. In 11th grade?

18 A. Yup. He would have been just a month shy of his 18th
19 birthday.

07:00 20 Q. So a little older than most students?

21 A. In 11th grade? Yes.

22 Q. Do you remember what he was like physically?

23 A. Solidly built boy.

24 Q. And what was he like? What was his personality like?

25 A. He was polite, he was respectful, but he kept himself

1 isolated. He was not particularly engaged socially. I tried
2 to reach out to my students. I like to pride myself on being
3 able to engage them, smile, enjoy the class. I don't ever
4 recall him smiling in my presence. I don't recall him engaging
5 any of the students in conversation other than the, you know,
6 most basic logistical issues of "May I borrow that music
7 stand?" "Where's the sheet?" Things like that. No social
8 discourse.

9 Q. Do you use humor in your classroom?

07:01 10 A. Yeah, I'm kind of a wiseguy.

11 Q. Or at least try to use humor in your classroom?

12 A. Probably the better way to express it.

13 Q. And could you get a laugh out of him?

14 A. No. I put that up to language as much as anything else
15 but...

16 Q. When you say "language," you knew that he was a fairly
17 recent immigrant, right?

18 A. He had a strong accent, but we communicated effectively.

19 Q. And was that unusual at Cambridge Rindge and Latin, for
07:02 20 students to come from another country?

21 A. Oh, not at all. Not at all. They love to talk about how
22 they have at any given time native-born students from something
23 around 40 different countries -- 80 different countries, excuse
24 me -- 40 home languages spoken. It's a common mantra for the
25 school. We take pride in it, actually.

1 Q. So his seeming sort of withdrawn or cut off, did you
2 attribute that to his being a recent immigrant or did you think
3 something else was going on?

4 MS. PELLEGRINI: Objection, leading.

5 THE COURT: Sustained.

6 Why don't you try again.

7 MS. CONRAD: Okay.

8 BY MS. CONRAD:

9 Q. Well, let me ask this: What, if any, concerns did you
07:02 10 have about Tamerlan when you observed his demeanor and his
11 interactions or lack thereof?

12 A. Well, I mean, you get children, students of all types, all
13 personalities, but when you see someone who chooses to set
14 themselves apart, you want to know why. I mean, we really feel
15 that community is important for these kids, to be a part of
16 something, which was one of the reasons I brought him in. When
17 I heard his story -- he came to me, asked me to join the group,
18 he really was undertrained for the group at that point, but he
19 seemed impassioned. He really -- "I want to do this."

07:03 20 I tried to lay out for him why he wasn't the best
21 candidate and normally someone in his situation I wouldn't
22 permit to join this group, not at this level of his piano
23 experience; however, one of the things that I try to do, that
24 the school tries to do, is to engage students in community.
25 And it was clear to me, it seemed clear to me, that he was

1 fairly new to the country, certainly to the school system, that
2 this might be a good opportunity for him. So I'll often make
3 exceptions for students for various reasons if I think that it
4 might be a benefit.

5 Q. So can I just ask you to explain a little bit more -- so
6 what is the nature of this class?

7 A. Well, it's a jazz ensemble. It meets once per week in the
8 evening. It's an elective as a music course. The prerequisite
9 is that you be a solid, reasonably well-trained musician to
07:04 10 begin with because from there you move on into areas of
11 improvisation and creation, arranging, and you have to have a
12 good solid set of basic skills.

13 He had -- my understanding is that he had had one
14 semester of piano class, which really doesn't qualify you, but
15 he was kind of -- I think I used the word "impassioned" before.
16 He made it clear to me he really wanted to try this; he was
17 very interested. I knew he didn't have a piano at home, at
18 least that's what he told me, so we agreed he would use the
19 piano lab at school whenever he could before and after school.

07:05 20 That's a burden on a student, and we discussed that,
21 and I told him, "Look, I'm going to let you try this. I want
22 you to have the opportunity. But to be fair, you need to know
23 this is not going to be easy. This is going to be a burden on
24 you to keep this up, and we'll have to talk along the way. So
25 it might be too much for you." He seemed appreciative of that.

1 You know, he thanked me. I took him at face value.

2 Q. And is this a group that performs?

3 A. They do. At least twice a year, generally more.

4 Q. And as the year went on, how did he do?

5 A. He made a good effort at first. He kept up more or less
6 in the early stages, but as the work became more sophisticated,
7 it was clear he was having a really hard time keeping up.

8 Q. Did you make a decision about -- as a result of that?

9 A. Ultimately. We met a couple of times for extra help after
07:06 10 school. He was -- as always, he was respectful, but he wasn't
11 able to keep up with the class.

12 So I made the decision -- there were a couple of -- I
13 guess you could call them warning conversations. I told him he
14 really needed to try to find a way to get in there to make the
15 work happen. As I said, we had a couple of extra-help
16 sessions.

17 I finally said to him, "Look, if we don't have some
18 meaningful progress in the next few weeks, I can't let you play
19 in the spring concert. You're not going to be ready." This is
07:07 20 a team effort. I said, "I want to respect what you tried to
21 do, the difficulty of your position, but I can't put you on
22 that stage if you're not ready. It's not fair to the rest of
23 the ensemble."

24 Q. How did he respond to that?

25 A. Well, he didn't yell at me, but he -- I guess it's fair to

1 say he glared at me. I won't say I was ever nervous in his
2 presence, but I was definitely not being able to read him. I
3 was uncomfortable. I never knew how he would respond. Again,
4 he showed so little aspect of himself in class, it was hard to
5 know how he would respond to any particular situation.

6 He glared at me. He was not happy. He argued,
7 respectfully, but the look in his eyes was not pleasant. I
8 wasn't surprised by that, but not really knowing -- not
9 understanding him the way I felt I did most of my students, I
07:08 10 wasn't sure to what extent he would -- I didn't suspect any
11 sort of physical altercation or out-of-control altercation, but
12 I wasn't comfortable. I didn't know where he would take that.

13 Q. Had you, by the way, discussed your concerns about
14 Tamerlan with any other members of the faculty?

15 A. There was a teacher next door who had met him, and I
16 really don't recall under what circumstances, but we did speak
17 of him a couple of times.

18 Q. And what concerns were expressed?

19 MS. PELLEGRINI: Objection.

07:08 20 THE COURT: Sustained.

21 BY MS. CONRAD:

22 Q. What concerns did you have about him?

23 A. He didn't seem to be adjusting socially, at least to the
24 classroom. I wasn't aware of his situation outside. But it
25 was very unusual for someone to come in week after week and

1 remain isolated.

2 I'd had many students with language difficulties in
3 the past, but there always seemed to be a way, some touch
4 point, some interface with the other kids somewhere with me,
5 and I never found that with him.

6 Q. After you had this conversation with him where you felt he
7 was not really able to participate, what happened? Did he
8 remain in the class?

9 A. Well, we had a couple of these in advance of his actually
07:09 10 leaving the class. You know, he made kind of promises that
11 kids make, but it didn't happen and I understood. I didn't
12 judge him for it. It was a difficult situation. When we had
13 the discussion, it was perhaps three weeks, a month before the
14 concert. As I said, he was not happy --

15 Q. Did he end up withdrawing from the class?

16 A. He did. I made an agreement. This is an elective. This
17 is something the kids choose to do at night. And especially
18 given his unusual circumstances of really not being prepared
19 for the class -- and not his fault, I was trying to help him
07:10 20 out -- I didn't want to ruin his grade point average.

21 I didn't want to put him in a difficult academic
22 position, so we agreed on a gentleman's C. I said, "I will
23 give you a reasonable grade here. You did make some effort,
24 but you are in an unusually difficult circumstance." So that's
25 the grade he left with. He went to his guidance counselor and

1 had it changed.

2 Q. When you heard about the Boston Marathon bombing in April
3 of 2013 and you heard Tamerlan's name associated with it, did
4 you recognize the name at first?

5 MS. PELLEGRINI: Objection.

6 THE WITNESS: No.

7 THE COURT: No, you may answer whether you recognized
8 the name.

9 THE WITNESS: I didn't initially, no.

07:11 10 BY MS. CONRAD:

11 Q. Did someone contact you and remind you that you had had
12 this interaction with him?

13 MS. PELLEGRINI: Objection.

14 THE COURT: Overruled.

15 You may answer it.

16 THE WITNESS: I received a phone call from a colleague
17 who said --

18 MS. PELLEGRINI: Objection to what somebody else said.

19 BY MS. CONRAD:

07:11 20 Q. Did that phone call -- after that phone call, did you
21 recognize the name and the face?

22 A. Yes. There was -- I don't know the best way to word this,
23 but following my conversation a lot of memories came flooding
24 back.

25 Q. And how did you react to the news that someone you had

1 taught had been involved in the marathon bombing?

2 MS. PELLEGRINI: Objection.

3 THE COURT: Sustained.

4 MS. CONRAD: Nothing further.

5 MS. PELLEGRINI: I just have a couple.

6 THE COURT: Go ahead.

7 CROSS-EXAMINATION

8 BY MS. PELLEGRINI:

9 Q. Good afternoon, Mr. Ponte.

07:12 10 A. Good afternoon.

11 Q. My name is Nadine Pellegrini. I'm an Assistant United
12 States Attorney. I just have a couple of questions for you.

13 So we're talking about a class that Tamerlan Tsarnaev
14 took in 2004?

15 A. Correct.

16 Q. This would be nine years before the Boston Marathon
17 bombing?

18 A. Correct.

19 Q. And he wanted to be in a jazz ensemble but couldn't play
07:12 20 the piano well?

21 A. Correct.

22 MS. PELLEGRINI: I have nothing further. Thank you.

23 THE COURT: Anything further?

24 MS. CONRAD: Nothing further.

25 THE COURT: All right. Thank you, Mr. Ponte. You may

1 step down.

2 (The witness is excused.)

3 THE COURT: Unless Mr. Curran is really short, I think
4 we should recess here.

5 Okay. We'll call it a day. Again, remember my
6 cautions, please. And we'll see you tomorrow and make some
7 more progress.

8 THE CLERK: All rise for the Court and jury. Court
9 will be in recess.

07:12 10 (The Court and jury exit the courtroom and the
11 proceedings adjourned at 3:56 p.m.)

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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR
Official Court reporter

Date: 4/27/15